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PACKER CONSENT DECREE

LETTER FROM THE CHAIRMAN OF THE FEDERAL TRADE COMMISSION

TRANSMITTING
IN RESPONSE TO A SENATE RESOLUTION
OF DECEMBER 8, 1924

A REPORT CONCERNING THE PRESENT STATUS OF THE CONSENT DECREE IN THE CASE OF THE UNITED STATES VS. SWIFT & CO. ET AL., ENTERED IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, FEBRUARY 27, 1920

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FEDERAL TRADE COMMISSION

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LETTER OF TRANSMITTAL

FEDERAL TRADE COMMISSION,
Washington, February 20, 1925.

SIR: I have the honor to transmit herewith a report of the Federal Trade Commission concerning the history and present status of the consent decree entered in the Supreme Court of the District of Columbia on February 27, 1920, in the case of the United States *v.* Swift & Co. et al., commonly known as the packer consent decree. This report is submitted in response to Senate Resolution No. 278, adopted December 8, 1924.

By direction of the commission.

Cordially yours,

VERNON W. VAN FLEET,
Chairman.

The PRESIDENT OF THE SENATE OF THE UNITED STATES,
Washington, D. C.

REPORT OF THE FEDERAL TRADE COMMISSION ON THE HISTORY AND PRESENT STATUS OF THE PACKER CONSENT DECREE

FEBRUARY 20, 1925.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES.

SIR: This report is made pursuant to Senate Resolution 278, adopted December 8, 1924, as follows:

Whereas questions of public policy, both as to the large meat packers and as to the wholesale grocers, are involved in any modification or in the annulment of the consent decree entered in the Supreme Court of the District of Columbia on February 27, 1920, in the case of the United States *v.* Swift & Co. et al., commonly known as the packer consent decree; and

Whereas these questions should properly be considered by the Congress, since the said decree was before the Congress when it considered and passed the packers and stockyards act, 1921, and since the Congress relied on said decree, consented to by the packer defendants in a prosecution under the Sherman Antitrust Act, to cover the subject contained in said decree; and

Whereas modification of said decree is now being sought in the courts on the alleged ground, in part, that it operates to relieve the wholesale grocers of the country of competition from the defendant meat packers who, theretofore largely engaged in the wholesale grocery trade, were by the consent decree prohibited from engaging therein, with the alleged result of creating a monopoly in favor of the wholesale grocery association; and

Whereas the entire annulment and vacating of the said decree, which covers such important subjects as the ownership of stockyards and the retailing of meats as well as the wholesale grocery matter, is being sought on divers alleged grounds by the defendant packers pursuant to a motion filed by them in said case on November 5, 1924, in the Supreme Court of the District of Columbia; and

Whereas the Federal Trade Commission at divers times has investigated the wholesale grocery trade and at divers times has taken action within its jurisdiction against certain associations of wholesale grocers for unfair methods of competition tending toward monopoly, and is on that account well informed on conditions in that trade; and

Whereas, moreover, the Federal Trade Commission is well informed on the meat-packing industry through its investigation and report on that subject, which report had great influence on the Congress in considering the packers and stockyards act, 1921, and on the Attorney General of the United States in the drawing of the terms of the said decree, to which he consented for the Government; therefore be it

Resolved, That the Senate hereby requests the Federal Trade Commission to report concisely to it at the earliest possible time all information in its possession or readily securable concerning the history and present status of the said consent decree and of the hearings, litigation, and other action growing out of it, and concerning the respective effects that may be expected if the consent decree is enforced, is modified as proposed, or is annulled, together with its recommendations on the public policies involved.

This resolution emphasizes the fact that questions of public policy with respect to the distribution of a large part of the Nation's food supply are involved in any modification or in the annulment of the packer consent decree. It also notes that the consent decree, in addition to prohibiting the large meat packers from dealing in general grocery lines, covers such important subjects as the retailing of meat and the ownership of stockyards. The resolution also recites that the question of modification or annulment of the consent

decree should be considered by Congress, because the packers and stockyards act, as adopted by Congress, omitted certain regulations proposed in other bills, since they were already covered by the consent decree.

In compliance with this resolution the commission states herein, as concisely as practicable, the more important available facts with respect to the history and present status of the consent decree and briefly summarizes the data in its possession. In order to secure as much current information as was readily available, the large meat packers, the two national wholesale grocers' organizations, and other interested parties were requested to furnish the commission with pertinent data. Valuable information was also obtained from the Department of Agriculture, the Department of Justice, and the Treasury Department. It should be noted that the commission has not been in touch with the activities of the packers in recent years because its jurisdiction over these agencies was removed by the packers and stockyards act which became effective in August, 1921.

ORIGIN OF THE DECREE

In 1919 the Department of Justice, according to official announcements, was preparing to present to a Federal grand jury in New York evidence of a combination in the meat-packing industry in violation of the antitrust laws with a view to procuring an indictment. Negotiations with the Department of Justice, initiated by the packers in the fall of 1919, resulted in the suspension of the grand jury proceedings and the application to the civil courts for a decree to which both parties consented. On February 27, 1920, the Attorney General filed a petition in the Supreme Court of the District of Columbia, alleging an unlawful combination and asking for relief. By prearrangement, the case was not contested, and a consent decree, agreed to before petition was filed, was entered on the same day the petition was filed. By the terms of this decree the five companies (Armour & Co., Swift & Co., Wilson & Co. (Inc.), Morris & Co., and The Cudahy Packing Co.) and certain subsidiary or affiliated corporations and certain individuals connected with the corporate defendants were enjoined and restrained from maintaining or entering into any contract, combination, or conspiracy in restraint of trade, or from monopolizing or attempting to monopolize any part of trade or commerce.

The defendants were required, among other things:

(1) To dispose of their holdings in public stockyards.

(2) To dispose of their interest in stockyard railroads and terminals.

(3) To dispose of their interest in market newspapers.

(4) To dispose of their interest in public cold storage warehouses, except when necessary for their own meat products.

(5) To disassociate themselves from the retail meat business.

(6) To discontinue using their facilities in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in certain commodities commonly referred to as unrelated to the meat packing industry, which commodities were enumerated in said decree and are principally wholesale grocery lines.

(7) To disassociate themselves from manufacturing, selling, jobbing, distributing, or otherwise dealing in such unrelated commodi-

ties, and from ownership of any capital stock in corporations engaged in manufacturing, selling, distributing, or otherwise dealing in such unrelated commodities.

(8) Individual defendants are enjoined from owning, severally or collectively, voting stock aggregating 50 per cent or more in any corporation, or a half interest or more in any firm or association engaged in manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in certain unrelated commodities enumerated in said decree.

For the fulfillment of these changes the maximum limit of time permitted by the decree was two years.

The packer defendants consented to the entry of the decree upon a condition expressly embodied in the decree, as follows:

> That their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

The commission was not a party to the framing of the terms of the consent decree and was not consulted with reference to its provisions.

The commission at this point desires to call attention to certain public documents which contain in great detail the first four years of the history of this consent decree and of the hearings, litigation and other actions growing out of it. The origin of these documents is as follows:

(*a*) The Senate of the United States on February 3, 1922, adopted the following resolution (S. Res. 211, 67th Cong., 2d sess.):

> *Resolved*, That the Attorney General of the United States be requested to report to the Senate (a) what steps, if any, have been taken to enforce and carry out the terms of said decree, (b) what modification, if any, has been proposed to him or is being considered by him, with a view to his applying to the court for the adoption thereof, (c) any and all evidence which may have been taken in the recent hearings on the subject before the representatives appointed by the Attorney General's office; * * *

In response to this request the Attorney General on March 1, 1922, transmitted to the Senate a report of considerable length, and additional information and data were furnished on April 4, 1922, and again in March, 1923, all of which was printed as a part of the hearings of a subcommittee of the Senate Committee on Agriculture and Forestry, Sixty-seventh Congress, fourth session, on the packers' consent decree.

(*b*) The Senate of the United States on February 16, 1924, passed a resolution (S. Res. 145, 68th Cong., 1st sess.), and on February 20, 1924, another resolution (S. Res. 167, 68th Cong., 1st sess.), both of which requested the Attorney General to furnish certain information with respect to the consent decree. Senate Resolution 145 is as follows:

> *Resolved*, That the Attorney General be, and he hereby is, directed to report immediately to the Senate all information now in his possession relating to the steps taken by him to secure compliance by the Big Five meat packing companies, with the terms of the consent decree entered in the Supreme Court of the District of Columbia on February 27, 1920, agreed to by the said Big Five packers, and to report in full to the Senate concerning the status of each of the defendants with relation to divesting themselves of the so-called unrelated items according to the terms of the said decree and to advise fully concerning noncompliance, if any there be, with the terms of the decree by any one or more of the said packers.

And Senate Resolution 167 reads as follows:

Resolved, That the Attorney General be, and he hereby is, directed to furnish the Senate with the following information:

1. Has the Department of Justice enforced the so-called consent decree in the case of the United States of America, plaintiff, *v.* Swift & Co. et al., defendants, entered in the Supreme Court of the District of Columbia on February 27, 1920?

2. If said decree has not been enforced, give the reasons for such nonenforcement.

3. Does the Department of Justice regard said decree as legally enforceable, and, if the same is not in the judgment of the Department of Justice legally enforceable, then give the reasons why the same is invalid.

4. If said decree is in the judgment of the Department of Justice invalid, then has the same been invalid from the beginning?

The Attorney General replied to these two requests in a report to the Senate dated March 8, 1924, which was referred to the Committee on Agriculture and Forestry, and later printed as Senate Document 61, Sixty-eighth Congress, first session.

In the reports referred to above, all of which have been printed by the Senate, the Attorney General has reviewed the history and progress of the decree up to March, 1924, including a detailed account of the manner and respects in which the Big Five packers have complied with its provisions, and including also an account of the hearings and litigation growing out of the decree.

So fully has the Attorney General reported on these matters covering the first four years of the existence of the decree that it does not seem necessary for the commission to reiterate this record except in summary form. It will, therefore, confine this part of its report more particularly to the events of 1924, and only briefly recount the manner in which the packers have complied with the terms of the decree.

HISTORY OF PACKERS' COMPLIANCE WITH THE DECREE

The records in the Supreme Court of the District of Columbia relating to this case and recent information furnished by the Department of Justice show that the five packers had, at the close of the year 1924, or nearly five years after the date of the decree, either complied with, or failed to comply with, the terms of the decree in such particulars as are set forth below:

INJUNCTION AGAINST COMBINATION

The first provision of the decree is a general injunction and prohibition practically in the language of the antitrust laws against the continuance of an illegal combination which the Department of Justice alleged to exist among the Big Five packers, and is as follows:

First. That the corporate defendants, and each of them, be, and they are hereby, jointly and severally, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally, monopolizing, or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

This feature of the decree was based on charges made in the petition filed by the Attorney General on the same day the decree was

entered, to the effect that an unlawful combination existed. The language used by the Government in its petition was as follows:

> By the unlawful means and methods hereinafter set out and complained of, the parent companies and the subsidiaries, defendants, acting by and through their principal officers, who have been made defendants herein, have attempted to dominate, control, and monopolize a very great production of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities herein referred to, and which are necessary to the life, health, and welfare of the people of the United States * * *
>
> The parent companies have entered into certain unlawful contracts and combinations to restrain trade and commerce and to artificially prevent between themselves competition in the prices for which meat and meat products are sold.
>
> The most important of said contracts and agreements is what is known as the percentage purchase arrangement. This arrangement, although applied primarily in the purchase of livestock, had, as its ultimate object the elimination of competition, not only in the purchase of livestock but also in the sale of dressed meats. It is a well established commercial principle that a limitation upon the source of supply and the consequent limitation upon volume of business are the easiest means of removing all incentive to reduce prices.
>
> The simplest way to limit the volume of dressed meat is to limit the purchase of livestock. Recognizing these principles, the parent companies thereupon agreed upon and thereafter recognized between themselves certain percentages or proportions to which they deemed that each company was entitled, and they thereafter so gauged their purchases that annually their respective purchases approximated actually or substantially the percentages so agreed upon.
>
> As a means of perfecting this arrangement, divers percentages, varying at different stockyards, were agreed upon, and understandings were had that certain of the parent companies should buy from certain yards, or should refrain from buying from certain stockyards. In order to prevent such plans from being disarranged by outsiders, agreements were made with such outsiders by which purchases between the parent companies and the independents were effected upon a percentage basis similar to the above.
>
> Means were adopted, and, by virtue of the parent companies' control over many of the stockyards, were easily executed by which sales to outsiders or independents were controlled by the parent companies.

It will be noted that the Attorney General names the "percentage purchase arrangement," referring to the five packers' division of livestock receipts at public stockyard markets on a definite percentage basis, as the most important of their illegal contracts and agreements. It was this livestock pool that the Federal Trade Commission referred to in its 1918 report to the President, concerning the meat packers, in the following language:

> The combination among the Big Five is not a casual agreement brought about by indirect and obscure methods, but a definite and positive conspiracy for the purpose of regulating purchases of livestock and controlling the price of meat, the terms of the conspiracy being found in certain documents which are in our possession.[1]

Later these documents were transmitted to the Department of Justice. The Attorney General, through his attorneys, examined the report of the commission and the vast mass of detailed evidence not covered in the report which the commission furnished to the Department of Justice. The department also made certain investigations of its own. The conclusions of the Attorney General were that the packers were guilty of violation of the Sherman law.

The commission is unable to report as to whether or not the defendant packers have discontinued observance of the livestock percentage purchase agreements. There appears to be no information available in the court or other public records with respect to this feature of the

[1] Report on Meat Packing Industry, part 1, p. 32.

injunctions contained in the consent decree, and this commission has made no further inquiry into the conduct of the packers with respect to these percentages, because, as already noted, these companies have been expressly excluded from its jurisdiction by the packers and stockyards act.

STOCKYARDS AND TERMINAL RAILWAYS

The decree enjoined and restrained the corporate defendants from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents, or servants, any shares of capital stock or other interests whatsoever in any public stockyards market company. The defendants were required to file with the court within 90 days after the entry of the decree, for the court's approval, a plan for divesting themselves of all such interests in public stockyard market companies.

The Big Five, on August 31, 1920, filed a plan by which they proposed to divest themselves of their share holdings in 15 important stockyards by selling such holdings to F. H. Prince & Co., of Boston. The plan called for the organization of a holding company for all these yards. The commission, proceeding under its statutory power, made an immediate investigation of the manner in which the decree was being carried out by the packers with respect to divesting themselves of ownership in the stockyards. After studying the packers' plan the commission transmitted, on September 16, 1920, a report to the Attorney General in which it objected to said plan, stating that such plan would not secure the objectives sought in this litigation. The two principal grounds given for these conclusions were: (1) That the long-time stockyards relations of F. H. Prince & Co. with the packers had been such that the plan as outlined would not result in a divorcement of the stockyards from packers' interests, and (2) that the plan as outlined would result in an infraction of the Sherman law greater and more serious than the existing infraction. The Department of Justice presented its objections to the aforesaid plan to the court, which were in substance and effect the same as those presented to the Attorney General by the commission. The packers thereupon withdrew the plan.

In the latter part of October, 1920, the packers filed with the court a second plan, which again provided for the utilization of F. H. Prince & Co., to bring about a severance of the defendants from the ownership and operation of the stockyards, and proposed the organization of a new holding company to be known as the United Stockyards (Inc.). This holding company, it was proposed, would combine and operate seven of the principal stockyards.

Attorney General Palmer, on November 4, 1920, addressed a letter to the Federal Trade Commission, in which, at the direction of President Wilson, he referred this second plan of the packers to the commission for its approval. In this letter the Attorney General stated that:

> The President has requested that the Department of Justice should not approve any plan for the disposition of these interests unless such a plan should first receive the unanimous approval of the Federal Trade Commission.

Pursuant to the Attorney General's letter, the commission, on November 13, sent to the Department of Justice a second report in

which it set forth its objections to the second plan proposed by the packers, pointing out that the second arrangement did not provide for an adequate severance of Big Five interests, and that it would create an illegal monopoly of the principal yards.

The commission at the same time suggested to the Attorney General the principles on which it was prepared to approve a plan for carrying out the decree in order that the interests of both the packers and the public might be preserved. The commission's suggestions provided in detail for the sale of the packers' interests through three or five trustees. The Department of Justice after receiving this second report from the commission filed similar objections with the court and submitted to the court the substituted plan of divestment proposed by the commission. Thereafter the court, on January 4, 1921, rendered its decision in the case. This decision in effect sustained the objections set forth by the commission and the Department of Justice to the various plans proposed by the packers. The court at the same time set forth such requirements for new plans as it would be able to approve, and stated that it could not approve any plan for the consolidation of the yards whether by holding company or otherwise.

The court having objected to both the first and second plans, a new plan was filed by the packers which provided for the appointment by themselves of banks or trust companies in the various cities where their stockyard properties are located as sales agents for the shares of stock owned by the defendants in the stockyards of such cities. The plan also fixed minimum prices at which such shares of stock might be sold. In response to a request from the Attorney General on February 28, 1921, the commission sent to the Department of Justice a statement setting forth its specific objections to this third plan. The commission in this communication contended that through sales in this manner the public might be excluded from purchasing, and that the shares of stock, though sold, might change hands without an actual severance of packer control resulting.

Upon the recommendation of the Department of Justice, this third plan was rejected by the court.

After the court had ordered the taking of testimony as to the value of the packers' stockyard holdings, Armour and Swift submitted a fourth plan which the court finally approved. This provided for the deposit of their share holdings with the Illinois Merchants' Trust Co. (formerly the Illinois Trust & Savings Bank) as a depository, such holdings to be held by this trust company until sold by the defendants. Hon. George Sutherland (now Mr. Justice Sutherland, of the Supreme Court of the United States) and Hon. Henry W. Anderson, of Richmond, Va., were appointed by the court as voting trustees of the stock so deposited. The plan provided that these trustees were to exercise visitorial and inquisitorial powers over said properties and to vote the stock of defendants therein, but not to vote such stock to change the management or the conduct of the yards, unless both trustees agreed that such yards were being used in violation of the antitrust laws or the decree. Mr. Sutherland resigned as trustee upon his elevation to the Supreme Court of the United States.

Somewhat similar plans were approved by the court for Morris & Co. and Wilson & Co. with the Munsey Trust Co., of Washington,

as depository. The Cudahy group were permitted under certain conditions to dispose directly of their share holdings.

Information furnished by the Department of Justice shows that the Cudahy and Morris groups have sold the greater part of their stockyard share holdings. The Wilson group have, it appears, not yet sold a substantial part of their group holdings; these, however, did not constitute a control in any stockyard company. The share holdings of the Armour and Swift groups were substantial and constituted a control of most of the large stockyard companies. These two groups, it appears, have made little progress in disposing of their prohibited stockyard interests.

The following statements show to what extent the different packers had on December 19, 1924, sold their shares of stock in stockyard companies:

The Swift group

Location of stockyards	Total capital stock	Total holdings of Swift group		Total holdings disposed of by Dec. 19, 1924	
		Amount	Per-centage	Amount	Per-centage
Sioux City, Iowa	[1] $1,460,700	$940,700	64.4	None.	None.
	[2] 2,099,750	1,167,100	55.6	None.	None.
St. Paul, Minn	4,000,000	1,472,800	36.8	$22,400	1.5
St. Joseph, Mo	2,500,000	2,000,100	80.0	3,900	.2
Fort Worth, Tex	2,750,000	907,500	33.0	None.	None.
Kansas City, Mo	[1] 7,991,500	37,100	.5	37,100	100.0
	[2] 5,000,000	10,600	.2	10,600	100.0
Denver, Colo	[2] 1,500,000	750,000	50.0	None.	None.
St. Louis, Mo	7,500,000	1,898,400	25.3	790,600	41.6
Omaha, Nebr	7,496,300	159,600	.2	159,600	100.0
Louisville, Ky	1,300,000	161,500	12.4	None.	None.
Jersey City, N. J	500,000	90,000	18.0	None.	None.
Newark, N. J	50,000	47,500	95.0	None.	None.
Milwaukee, Wis	200,000	200,000	100.0	None.	None.
Brighton, Mass	10,000	6,200	62.0	None.	None.
Portland, Oreg	450,000	382,500	85.0	None.	None.
Cleveland, Ohio	2,000,000	160,000	8.0	14,500	8.9

[1] Preferred. [2] Common.

The Armour Group

Location of stockyards	Total capital stock	Total holdings of Armour group		Total holdings disposed of by Dec. 19, 1924	
		Amount	Per-centage	Amount	Per-centage
Fort Worth, Tex	$2,750,000	$932,400	33.9	$3,100	.3
St. Paul, Minn	4,000,000	912,000	22.8	16,000	1.8
Omaha, Nebr	7,496,300	814,800	10.9	814,800	100.0
Louisville, Ky	1,300,000	167,500	12.9	None.	None.
Denver, Colo	[1] 1,500,000	750,000	50.0	None.	None.
St. Louis, Mo	7,500,000	510,000	6.8	160,000	31.4
Sioux City, Iowa	[2] 1,460,700	150,000	10.3	None.	None.
	[1] 2,099,750	350,000	16.7	None.	None.
Kansas City, Mo	[2] 7,991,500	10,000	.1	None.	None.
Jersey City, N. J	500,000	297,500	59.5	None.	None.
Pittsburgh, Pa	1,200,000	457,200	38.1	None.	None.

[1] Common. [2] Preferred.

The Morris group

Location of stockyards	Total capital stock	Total holdings of Morris group		Total holdings disposed of by Dec. 19, 1924	
		Amount	Per centage	Amount	Per centage
Kansas City, Mo	[1] $5,000,000	$884,000	17.7	$851,000	96.3
St. Joseph, Mo	2,500,000	38,250	1.5	26,250	68.6
Oklahoma City, Okla	1,000,000	129,600	13.0	None.	None.
El Paso, Tex	100,000	46,100	46.1	46,100	100.0
New York, N. Y	500,000	46,400	9.3	46,400	100.0
Baltimore, Md		1,800		1,800	100.0
West Philadelphia, Pa		1,300		1,300	100.0
St. Louis, Mo	7,500,000	157,000	2.1	137,800	87.8

[1] Common.

The Wilson group

Location of stockyards	Total capital stock	Total holdings of Wilson group		Total holdings disposed of by Dec. 19, 1924	
		Amount	Per centage	Amount	Per centage
El Paso, Tex	$100,000	$7,500	0.8	$7,500	100.0
Kansas City, Mo	[1] 7,991,500	2,800	.03	None.	None.
	[2] 5,000,000	50,800	.01	None.	None.
New York, N. Y		25,000		None.	None.
Oklahoma City, Okla	1,000,000	20,000	2.0	None.	None.

[1] Preferred. [2] Common.

The Cudahy group

Location of stockyards	Total capital stock	Total holdings of Cudahy group		Total holdings disposed of by Nov. 1, 1924	
		Amount	Per centage	Amount	Per centage
Wichita, Kans	$1,500,000	$625,900	41.7	$368,200	58.8
Sioux City, Iowa	[1] 1,460,700	111,700	7.6	66,900	59.9
	[2] 2,099,750	12,900	.6	None.	None.
Omaha, Nebr	7,496,300	3,100		3,100	100.0
Kansas City, Mo	[2] 5,000,000	50,000	1.0	50,000	100.0
Salt Lake City, Utah		562,500		562,500	100.0

[1] Preferred. [2] Common.

STOCKYARD TERMINAL RAILROADS

The stockyard terminal railroads are, in most cases, owned by the stockyard companies, and not directly by the Big Five packers. The above data with respect to the sales of shares of stock in the stockyards will therefore generally represent a corresponding severance of packers' share holdings of stockyard terminal railways.

MARKET NEWSPAPERS

It appears that they have complied with the terms of the decree and have disposed of practically all of their prohibited holdings in livestock market newspaper companies. The Swift interests owned 11 shares out of a total of 60 in the St. Joseph Journal Publishing Co. These Swift shares have been disposed of and the sale approved by the court.

COLD STORAGE

These five packers appear to have disposed of all their public cold-storage warehouses in compliance with the decree.

RETAILING OF MEATS

These packers, the reports indicate, have complied with that provision of the decree prohibiting their ownership or operation of retail meat markets, but this, it should be noted, was a branch of business in which they had never been engaged.

UNRELATED LINES

At the time of the entry of the decree, the Big Five packers generally owned companies which were engaged in the manufacture and distribution of so-called "unrelated lines," chiefly groceries, and had on hand large inventories or stocks of goods in those lines which they had been marketing through their various facilities.

The records show that Armour & Co. still owns five fruit and vegetable canning or processing companies,[2] but has disposed of its shares of stock in several others of such companies. It had on hand on December 19, 1924, stocks of goods in unrelated lines amounting to a little over $1,000,000.

Swift & Co., Morris & Co., Wilson & Co., and The Cudahy Packing Co., have, according to information furnished by the Department of Justice, almost completely disposed of their share holdings in companies handling unrelated lines and of their stocks of goods in those lines. As a possible qualification to the foregoing statement the position of Libby, McNeil & Libby, one of the large companies engaged in the business of producing and distributing canned goods and other grocery lines, should be noted. Substantially all of the capital stock of this company was, prior to January 1, 1919, owned by Swift & Co. Libby, McNeil & Libby, was reorganized in 1918—before the entry of the consent decree—and was nominally separated as a corporation from control of Swift & Co., although the capital stock of the reorganized company was transferred to certain officers and stockholders of Swift & Co. The close affiliation of Libby, McNeil & Libby with Swift & Co. at present is indicated from the interlocking directorates of the two companies [3] and the commission believes that the relationship is out of harmony with the ends sought to be obtained by the decree.

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[2] Strawberry preserving plant, Ridgley, Md. Canning plant, Frankfort, Mich. Grape juice plant, Westfield, N. Y. Grape juice plant, Mattawan, Mich. Seven-eighths stock interest in canning plant, Seattle, Wash.

[3] The following individuals were directors of both companies in 1924 according to Moody's Manual: L. F. Swift, E. F. Swift, C. H. Swift, H. H. Swift, and L. A. Carton

Furthermore, Wilson & Co. (Inc.), prior to August 23, 1919, was also engaged in the operation of several plants for the canning of vegetables and fish and the sale and distribution of the products of such plants in interstate commerce. At this time it sold these properties and businesses to a reorganized competitor, Austin, Nichols & Co. (Inc.), one of the largest wholesale grocery concerns of the country. The Supreme Court of the District of Columbia, under its retention of jurisdiction in the matter of the consent decree, approved the divestment by Wilson & Co. of all properties not directly connected with the meat packing business. The commission has no information whether the expectations of the court have been realized in the outcome.[4]

RELATION OF FEDERAL TRADE COMMISSION TO THE DECREE

Although the Federal Trade Commission was not a party to the framing of the terms of the consent decree and was not consulted with reference to its particular provisions, the decree, in a broader sense, was based on and was the result of the commission's inquiry and findings with respect to the meat-packing industry made at the direction of the President.

The principal findings of the commission were these:

1. That five great packing concerns—Swift, Armour, Morris, Cudahy, and Wilson—were engaged in combinations, conspiracies and restraints of trade out of harmony with the law and public interest.

2. That these packers had attained such a dominant position that they controlled at will the market in which they bought their supplies, the market in which they sold their products, and, working in combination, held the fortunes of their competitors in their hands.

3. That their monopolistic control, as a group, over the American meat industry was obtained largely through monopolistic control of the public stockyard markets and the refrigerator cars, and was not the result of superior operating efficiency.

4. That in 1917 these big packers handled 70.5 per cent of all animals slaughtered under Federal inspection.

5. That these packers were entering the trade in the unrelated lines, groceries, etc., in a large way and seemed to threaten to put some of the existing distributors out of business.

These were the conditions found to exist in 1917 and 1918. Two major economic remedies were proposed by the commission for the underlying evils found to exist. It recommended in its report, and urged before committees of the Congress, that the Big Five packers be required to relinquish their control of the public stockyards and also their control of refrigerator meat cars.

The packer consent decree does not follow closely the suggestions of the commission with regard to the remedies for the principal evils which the commission believes should be corrected.

With respect to the packers' alleged illegal combinations it enjoins the defendants in the general language of the Sherman Act.

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[4] It may be noted that a case now before the commission against Austin, Nichols & Co. does not involve the questions of interest here.

The decree embraces the commission's remedy of divorcement of the packers from control of the public stockyards, but fails completely to secure its other major requirement, namely, that of causing the packers to give up their control of refrigerator cars.

The provisions of the decree requiring the packers to divorce themselves of their "unrelated lines" and to stay out of the business of retailing meats, were not derived from the recommendations of the commission in its report on the meat-packing industry. The retailing of meat by the packers was not discussed by the commission, because in arranging the cooperation which the President directed should be effected between the Federal Trade Commission and the Department of Agriculture in the conduct of the meat investigation of 1917 and 1918, it was agreed that the department should investigate retail distribution of meat products. The Department of Agriculture, it appears, has been pursuing such studies for several years and has issued certain reports on the subject.

EFFORTS TO MODIFY THE CONSENT DECREE

Beginning in 1921, a vigorous effort was made to have the decree so modified as to permit the packers to continue handling the unrelated lines. This effort originated, apparently, with the California Cooperative Canneries, a fruit canning concern, composed of numerous fruit growers in California, which had a contract with Armour & Co. for the distribution of the canneries' products. This contract had been canceled shortly after the entry of the decree. Armour & Co. held and still holds a mortgage of $200,000 on the property of the California Cooperative Canneries.

Other canneries and several other interests, including some agricultural organizations, joined in a request to the Attorney General to have the decree modified.

These requests were being considered by the Attorney General when the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association applied to the court for leave to intervene and to be heard respecting any motions that might be filed or any proceedings that might be had seeking to change or modify the consent decree. Although opposed by the Attorney General, who contended before the court that no private persons or organizations had a right to be made parties to the cause on the side of the plaintiffs, the court granted the two grocery associations leave to intervene. Immediately these associations filed their intervening petitions in which they took a positive stand against modification of the decree as proposed.

REPORT OF INTERDEPARTMENTAL COMMITTEE

In order to give the question of modification the fullest consideration, the Attorney General secured the appointment of an interdepartmental committee of three to hear testimony for or against the proposed change in the decree. Accordingly, a committee, composed of one member selected by the Secretary of Agriculture, one by the Secretary of Commerce, and one by the Attorney General, heard a large number of witnesses during the latter part of 1921. The evidence taken in this way comprised over 4,000 transcript pages.

The position of the Federal Trade Commission was set forth in a formal statement to the committee by Nelson B. Gaskill, chairman, as follows:

> The Federal Trade Commission felt at the time of its entry that the consent decree failed to secure to the public the complete remedy for and protection against the practices charged in the bill of complaint, for which the commission believed sufficient evidence was then available. It was no party to framing the terms of this decree and it was not consulted with reference to its provisions.
>
> The commission feels that the proposed modification would still further lessen the remedial effect of the decree. It would be a surrender of one of the protective measures taken for the public which at the time of the compromise settlement was regarded as essential to the public right and which the respondents were willing to concede in exchange for concessions to them. If the provisions now sought to be eliminated from the decree were then essential to the protection of the public, they are essential now.
>
> The Federal Trade Commission in the light of its experience with the subject matter and with due regard only to the public right in the maintenance of the principles of free and fair competition, presents its opposition to the proposed course of action with reference to this decree.

The testimony before this committee was later printed in connection with the hearings before a subcommittee of the Senate Committee on Agriculture and Forestry on the packer consent decree, Sixty-seventh Congress, second session. The interdepartmental committee, after carefully considering the evidence before it, reached the following conclusions which it reported to the Attorney General:

> Your committee has come to the conclusion that such grave and far-reaching questions, which affect not only the provisions of the decree with respect to unrelated commodities but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally, are matters which, regardless of what position the Attorney General might assume, must be ultimately decided by the court which entered the decree before any modification could be made, and as those who most strongly oppose any modification—namely, the wholesale grocers—are now parties to this cause by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court, to present such questions and contentions in the first instance to the court for decision, without the same being in any way prejudged by the Attorney General.
>
> Therefore, your committee feels that this request by the California Cooperative Canneries Co., and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General.

This position was adopted by the Attorney General who, therefore, made no recommendation directly to the court with respect to modification.

INTERVENTION OF CALIFORNIA COOPERATIVE CANNERIES

The California Cooperative Canneries on April 19, 1922, filed a motion with the Supreme Court of the District of Columbia, requesting leave to intervene and to file a proposed intervening petition which was attached to said motion. The proposed petition showed the purpose of such intervention to be either to set aside and vacate the decree in its entirety, or so to modify it as to permit the packers to manufacture, deal in, and distribute the unrelated lines.

Special Assistant to the Attorney General Herman J. Galloway and United States attorney for the District of Columbia Peyton Gordon

both argued before the court in opposition to intervention by the canneries company and filed a brief against intervention. The Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association also appeared before the court in opposition to the request of the canneries company.

Justice Bailey, of the Supreme Court of the District of Columbia, in a decision rendered on October 16, 1922, denied the intervention request of the California Cooperative Canneries. His opinion was in part as follows:

> The canneries claim that the consent decree entered is void as to it, for these reasons: That it is a consent decree based upon an agreement made between the Government and the defendants prior to the bringing of the suit, which provided that this suit should be brought and this particular decree entered by consent; that in the decree the defendants maintain the truth of the allegations of their answers, which deny any wrongdoing on the part of the defendants, and that there was therefore not only no sufficient finding of facts to authorize the decree, but even an express refusal to admit such facts; and in addition that the whole proceedings were a fraud upon the court.
>
> None of the parties to the suit are before the court seeking to set aside the decree. It was entered on February 27, 1920, and pursuant to its provisions several of the defendants have disposed of large interests in what have been called "unrelated commodities," doubtless in some cases at considerable loss. If the decree were set aside, it would be impossible to restore the status quo. Without going into the question of laches in the application for leave to intervene, for the petition sets up grounds which might be sufficient to avoid that defense, I think that the motion for leave to intervene should be overruled.

On January 10, 1923, the California Cooperative Canneries filed a petition in the court for a rehearing of the motion to intervene. Briefs were subsequently filed by the Department of Justice and the above-named grocers' associations in opposition to the motion for a rehearing. The court refused the rehearing as requested, whereupon the California Cooperative Canneries appealed its case to the Court of Appeals of the District of Columbia, and filed a lengthy brief addressed not only to the question of intervention but also challenging the validity of the decree itself.

An answering brief was filed in the court of appeals by the Attorney General in opposition to the motion of the California Cooperative Canneries, in which the Government reiterated its averments contained in its original bill of complaint in this case, in which it had charged the packers with violation of the antitrust laws.

The court of appeals rendered a decision on June 2, 1924, granting the California Cooperative Canneries the right of intervention, thus reversing the action of the lower court.

The court of appeals, while not attempting, in its opinion, to discuss or to pass on the question of the validity of the decree as raised by the petitioner (the California Cooperative Canneries), made the following statement:

> Inasmuch as the validity of the consent decree was not questioned in the court below by any of the parties to the action, that question is not before us.
>
> The only order appealed from, and the one to which our attention is limited, is the refusal to grant appellant leave to intervene. What effect our ruling upon that question may have later, in the event we are called upon to determine the validity of the consent decree, it is unnecessary to consider at this time * * *.
>
> It is not clear on just what theory the court below should permit the Grocers' Association to intervene, and deny the right of intervention to appellant, as the interests of these parties seem to be diametrically opposed to each other. If the charge of appellant (California Cooperative Canneries) is true, that the wholesale grocers are using the decree against the packers to strengthen and build up a

giant monopoly in their various and varied lines of business, there would seem to be demand for a searching inquiry as to whether or not the court is being used as an agency to restrain one monopoly and thereby promote, strengthen, and build up another. Clearly it is not the policy of the antitrust act to accomplish this result. Nor will the decree of the court below, declaring the packers' combination illegal under the antitrust act, be sustained if its effect is to safeguard one public interest by the destruction of another.

Having been granted the right to intervene, the California Cooperative Canneries, in December, 1924, petitioned the Supreme Court of the District of Columbia to vacate and set aside the consent decree. They alleged a lack of jurisdiction of the court to enforce the decree, and also declared that the decree, in the attempted restriction of one monopoly in the meat business, was bringing about another monopoly in the wholesale grocery business, and thus in endeavoring to safeguard one public interest was endangering another. They asserted also that the decree is void because when it was entered there was no case or controversy pending in the court. Finally, it was asserted the decree itself violates the antitrust laws.

ATTITUDE OF THE "BIG FIVE" TOWARD MODIFICATION

None of the Big Five packers participated directly or openly in any of the efforts or requests made during 1921, 1922, and 1923 by the California Cooperative Canneries and others to have the decree so modified as to permit the packers to handle the "unrelated lines." Nor does it appear that any of them participated informally or indirectly in such efforts or requests, although the commission is advised that Armour & Co. and Wilson & Co. (Inc.) informally expressed to the Department of Justice a willingness to continue handling the "unrelated lines" in case the proposed modification became effective. On the other hand, the records of the court show that Morris & Co. and The Cudahy Packing Co. filed memoranda with the court definitely opposing the proposed modification. Swift & Co., in its yearbook for the year 1922, said:

> There have been many reports that the packers have asked for a modification of the consent decree, which prohibits their handling certain unrelated products; forbids their going into the retail business; and requires them to sell their interest in stockyards. Swift & Co. has not been a party to any request to have this decree modified. So far as I know, there is no truth to the report that the large packers are seeking to enter the retail field. Swift & Co. accepted the consent decree with the avowed purpose of being governed accordingly.

More recently, however, namely, four years and seven months after the entry of the decree, the two largest packers, Armour & Co. and Swift & Co., came out squarely against its validity. On November 5, 1924, these packers entered the Supreme Court of the District of Columbia with identical motions to have the decree, to which they had consented, vacated and set aside on the following grounds:

> 1. The consent decree is void, because the Supreme Court of the District of Columbia was without jurisdiction to enter the same for the following reasons:
> (*a*) There were no adjudicated facts before the court upon which the court could act.
> (*b*) The decree itself was beyond the jurisdictional power of the court to enter in any event.
> (*c*) The decree violates the fifth amendment to the Constitution of the United States.
> (*d*) There was no case or controversy before the court within the meaning of the Constitution and laws of the United States.

2. The decree is void because it is violative of the antitrust laws themselves, and neither the consent of the Attorney General nor the consent of the defendants could validate it.

3. The Attorney General was without power or authority to consent to the decree on behalf of the United States.

It will be noted that Wilson & Co. (Inc.), and The Cudahy Packing Co. refrained from taking any part in these proceedings. Armour & Co. and Swift & Co. predicate their motions to have the decree set aside on the charge that the Government, in the arguments of its counsel before the court of appeals in opposition to the petition of the California Cooperative Canneries, implies or asserts that the Big Five packers were found guilty of violating the antitrust laws, such implications or assertions constituting, they contend, a violation on the part of the Government of the terms of the decree. In the Government brief, which Armour & Co. and Swift & Co. make the basis of their attack on the validity of the entire consent decree, it appears that the Attorney General reasserts certain of the averments contained in the Government's original bill charging the packers with violations of the antitrust laws.

In their motion to have the entire decree vacated, Armour & Co. and Swift & Co. assert:

> That in opposing the petition filed by the California Cooperative Canneries, asking leave to intervene herein, the United States of America by its counsel, as well as National Wholesale Grocers' Association and American Wholesale Grocers' Association (formerly Southern Wholesale Grocers' Association), who are permitted to intervene herein, by their respective counsel, have asserted that the mere entry of the decree implies the facts necessary to sustain such decree notwithstanding the express provision in the decree itself that it was entered upon condition that the consents of the defendants that the entry of said decree shall not constitute or be considered an admission that the rendition or entry of said decree, or the decree itself shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States. The position so taken by the counsel representing the United States and said interveners is in direct and violent contradiction to the very condition embodied in the decree itself upon which the consents of said defendants were given, and if such position is sustained, the decree will be an adjudication that the defendants are guilty of violation of law contrary to the provisions of said stipulation reciting the terms upon which the parties consented to the entry of the decree and contrary to the condition expressed in the decree itself that the decree should not constitute or be considered an adjudication that the defendants or any of them have violated any law of the United States.

It does not appear from their statement in what respect the assertions of the Attorney General or of his representatives are inconsistent with the position taken by the Department of Justice, on the basis of which, in part, the consent decree was formulated and issued.

CHANGES IN THE SITUATION OF THE BIG FIVE PACKERS

The commission has no information with respect to whether or not the Big Five packers have suspended all of the activities on which their alleged combination was based, particularly the operation of their "livestock percentage purchase agreements" referred to above. Certain outstanding facts regarding changes in the general situation of the packing industry are, however, a matter of public record.

Armour & Co., the second largest packing company in the United States, purchased on March 28, 1923, the business and assets of Morris & Co., the third largest packing company in the United States. This

merger, by ending competition between these two companies, would seem to constitute a violation of paragraph 1 of the consent decree quoted above. These two companies were in active competition prior to the purchase, according to testimony given by their respective presidents to the Senate Committee on Agriculture in January, 1919, and their aggregate business forms a large proportion of the meat-packing industry.

Apparently the five packers, as a group, still monopolize the meat refrigerator-car service of the country, and it is obvious from the figures already quoted that the two of them who held the largest interests in stockyard companies still own several of the largest of the public stockyard market facilities.[5]

A change, however, has apparently occurred with respect to the importance of the Big Five packers in the meat-packing industry. The commission's report in 1918 showed that the five large meat-packing companies had increased their proportion of the total United States inspected slaughter of all classes of animals from 59.7 per cent in 1908 to 70.5 per cent in 1917. The independent packers, or all other companies killing under Federal inspection handled 40.3 per cent in 1908, and only 29.5 per cent in 1917. According to information secured from the records in the proceedings of the Secretary of Agriculture against Armour & Co. and Morris & Co. (to annul the purchase of the latter by the former under the packers and stockyards act) these five packers have sustained during the past six years a substantial decrease in their proportion of total inspected slaughter, and the independent packers have correspondingly gained. The following table shows a decline on the part of these five packers from 69.3 per cent in 1919 to 60.6 per cent in 1924, while the independents' proportion increased from 30.7 per cent in 1919 to 39.4 per cent in 1924:

[5] The Swift group still controls stockyards at Sioux City, Iowa; St. Joseph, Mo.; Newark, N. J.; Milwaukee, Wis.; Brighton, Mass.; and Portland, Oreg. The Armour group still controls the stockyards at Jersey City, N. J. (See tables, pp. 8 and 9.)

Table showing number of cattle, calves, sheep (including goats), and hogs slaughtered under Federal inspection during the six fiscal years from July 1, 1918, to June 30, 1924, inclusive, and the proportion slaughtered by each of the five principal packers including their subsidiary and affiliated companies [1]

	Cattle			Calves			Sheep (including goats)			Hogs			All animals		
	Number	Percentage of—		Number	Percentage of—		Number	Percentage of—		Number	Percentage of—		Number	Percentage of—	
		Grand total	Big five total		Grand total	Big five total		Grand total	Big five total		Grand total	Big five total		Grand total	Big five total
Grand total United States inspected slaughter:															
1919	11,241,991			3,674,227			11,394,030			44,398,389			70,708,637		
1920	9,709,819			4,227,558			12,412,097			38,981,914			65,331,388		
1921	8,179,572			3,896,207			12,472,462			37,702,866			62,251,107		
1922	7,871,457			3,924,255			11,982,192			39,416,439			63,194,343		
1923	9,029,536			4,337,780			11,428,832			48,600,069			73,396,217		
1924	9,188,652			4,667,948			11,536,280			54,416,481			79,809,361		
Total, Big Five:															
1919	8,827,831	78.5		2,840,568	77.3		9,889,951	86.8		27,430,371	61.8		48,988,721	69.3	
1920	7,429,352	76.5		3,149,581	74.5		10,503,799	84.5		21,715,901	55.7		42,798,633	65.5	
1921	5,933,983	72.5		2,764,966	70.9		10,156,924	81.4		19,941,965	52.9		38,797,838	62.3	
1922	5,622,693	71.4		2,728,655	69.5		9,513,575	79.3		19,587,281	49.7		37,452,204	59.3	
1923	6,696,861	74.2		3,201,115	73.8		9,550,890	83.6		26,035,831	53.6		45,484,697	62.0	
1924	6,721,229	73.2		3,400,847	72.9		9,599,698	83.2		28,658,097	52.7		48,379,871	60.6	
Total, all others:															
1919	2,414,160	21.5		833,659	22.7		1,504,079	13.2		16,968,018	38.2		21,719,916	30.7	
1920	2,280,467	23.5		1,077,977	25.5		1,908,298	15.5		17,266,013	44.3		22,532,755	34.5	
1921	2,245,589	27.5		1,131,241	29.1		2,315,538	18.6		17,760,901	47.1		23,453,269	37.7	
1922	2,248,764	28.6		1,195,600	30.5		2,468,617	20.7		19,829,158	50.3		25,742,139	40.7	
1923	2,332,675	25.8		1,136,665	26.2		1,877,942	16.4		22,564,238	46.4		27,911,520	38.0	
1924	2,467,423	26.8		1,267,101	27.1		1,936,582	16.8		25,758,384	47.3		31,429,490	39.4	
Armour & Co.:															
1919	2,293,243	20.4	26.0	689,140	18.7	24.3	2,445,373	21.5	24.7	7,239,915	16.3	26.4	12,667,671	18.0	25.9
1920	1,905,043	19.6	25.6	790,090	18.6	25.1	2,572,525	20.7	24.5	6,004,594	15.4	27.6	11,272,252	17.2	26.4
1921	1,536,203	18.8	25.9	723,261	18.6	26.2	2,493,370	20.0	24.6	5,495,943	14.6	27.6	10,248,777	16.4	26.4
1922	1,433,948	18.2	25.5	731,107	18.6	26.8	2,291,789	19.1	24.1	5,561,353	14.1	28.4	10,018,197	15.8	26.7
1923	1,743,784	19.3	26.0	912,014	21.0	28.5	2,458,925	21.5	25.7	7,621,448	15.7	29.3	12,736,171	17.4	28.0
1924	1,991,152	21.7	29.6	1,011,411	21.7	29.7	2,677,504	23.3	27.9	9,553,488	17.6	33.4	15,233,555	19.1	31.5

Morris & Co.:															
1919	1,527,503	13.6	17.3	335,966	9.1	11.8	1,121,319	9.8	11.3	3,478,797	7.8	12.7	6,463,585	9.1	13.2
1920	1,293,962	13.4	17.4	368,315	8.7	11.7	1,192,070	9.6	11.3	2,691,855	6.9	12.4	5,546,202	8.5	12.9
1921	957,025	11.7	16.1	314,291	8.1	11.4	1,089,657	8.7	10.7	2,353,668	6.3	11.8	4,714,641	7.6	12.2
1922	961,865	12.1	16.9	308,488	7.9	11.3	1,046,814	8.7	11.0	2,297,925	5.8	11.7	4,605,092	7.3	12.3
1923	1,092,166	12.1	16.3	343,813	7.9	10.7	884,745	7.7	9.3	3,110,082	6.4	11.9	5,430,806	7.4	11.9
1924	766,569	8.3	11.4	282,743	6.0	8.3	552,998	4.8	5.8	1,928,678	3.5	6.7	3,530,988	4.4	7.3
Total, Armour & Co. and Morris & Co.:															
1919	3,820,746	34.0	43.3	1,025,106	27.9	36.1	3,566,692	31.3	36.0	10,718,712	24.1	39.1	19,131,256	27.1	39.1
1920	3,199,005	33.0	43.0	1,158,405	27.3	36.8	3,764,596	30.3	35.8	8,696,449	22.3	40.0	16,818,454	25.7	39.3
1921	2,493,228	30.5	42.0	1,037,552	26.6	37.5	3,583,027	28.7	35.3	7,849,611	20.9	39.4	14,963,418	24.0	38.6
1922	2,385,813	30.3	42.4	1,039,595	26.5	38.1	3,338,603	27.8	35.1	7,859,278	19.9	40.1	14,623,289	23.1	39.0
1923	2,835,950	31.4	42.3	1,255,827	28.9	39.2	3,343,670	29.2	35.0	10,731,530	22.1	41.2	18,166,977	24.8	39.9
1924	2,757,721	30.0	41.0	1,294,154	27.7	38.0	3,230,502	28.0	33.7	11,482,166	21.1	40.1	18,764,543	23.5	38.8
Swift & Co.:															
1919	3,053,870	27.2	34.6	1,383,677	37.6	48.7	4,230,373	37.1	42.8	11,197,522	25.3	40.8	19,865,442	28.2	40.5
1920	2,576,584	26.6	34.7	1,486,718	35.2	47.2	4,472,720	36.0	42.7	8,476,639	21.7	39.0	17,012,661	26.0	39.8
1921	2,001,754	24.5	33.7	1,340,843	34.4	48.5	4,362,827	35.0	43.0	7,631,471	20.2	38.2	15,336,895	24.6	39.5
1922	1,909,768	24.3	34.0	1,328,384	33.8	48.7	4,131,260	34.5	42.4	7,554,836	19.2	38.6	14,924,248	23.7	39.9
1923	2,279,462	25.2	34.0	1,489,128	34.3	46.5	4,104,112	36.0	43.0	9,814,893	20.2	37.7	17,687,595	24.1	39.0
1924	2,351,934	25.7	35.0	1,599,732	34.3	47.1	4,283,790	37.1	44.6	11,053,959	20.3	38.6	19,289,415	24.2	39.9
Wilson & Co.:															
1919	1,051,182	9.3	11.9	242,784	6.6	8.5	944,625	8.3	9.6	3,016,626	6.8	11.0	5,255,217	7.4	10.7
1920	839,728	8.6	11.3	235,771	5.6	7.5	991,441	8.0	9.4	2,533,262	6.5	11.7	4,600,202	7.1	10.7
1921	780,042	9.5	13.1	228,294	5.8	8.3	1,120,930	9.0	11.0	2,650,434	7.0	13.3	4,779,700	7.7	12.3
1922	721,655	9.2	12.8	234,336	6.0	8.6	987,921	8.2	10.4	2,319,723	5.9	11.8	4,263,635	6.7	11.4
1923	860,474	10.0	12.9	268,229	6.2	8.4	940,315	8.2	9.8	2,948,139	6.1	11.3	5,017,157	6.8	11.0
1924	856,259	9.3	12.8	251,819	5.4	7.4	840,369	7.3	8.7	3,217,587	5.9	11.2	5,166,034	6.5	10.7
Cudahy Packing Co.:															
1919	902,033	8.0	10.2	189,001	5.1	6.7	1,148,261	10.1	11.6	2,497,511	5.6	9.1	4,736,806	6.6	9.7
1920	814,035	8.2	11.0	268,687	6.3	8.5	1,275,043	10.2	12.1	2,009,551	5.2	9.3	4,367,316	6.7	10.2
1921	658,959	8.0	11.1	158,277	4.0	5.7	1,090,140	8.7	10.7	1,810,449	4.8	9.1	3,717,825	6.0	9.6
1922	605,457	7.6	10.8	126,340	3.2	4.6	1,055,791	8.8	11.1	1,853,444	4.7	9.5	3,641,032	5.8	9.7
1923	720,975	8.0	10.8	187,931	4.3	5.9	1,162,793	10.2	12.2	2,541,269	5.2	9.8	4,612,968	6.3	10.1
1924	755,315	8.2	11.2	255,142	5.5	7.5	1,245,037	10.8	13.0	2,904,385	5.4	10.1	5,159,879	6.4	10.6

[1] Furnished by the Department of Agriculture from record in Secretary of Agriculture *v.* Armour & Co. et al., Government Exhibit, Osman, No. 1.

From the above it appears that the Big Five packers reached their highest proportion of the total slaughter of inspected animals in 1917 but that in 1924 their proportion had declined to about the same proportion they held in 1908.

Probably the most significant change that has occurred recently in the relative sizes of the different packer groups has been brought about through the purchase of the business of Morris & Co. by Armour & Co. By this acquisition Armour & Co. increased its proportion of the total inspected slaughter of all animals from 17.4 per cent in 1923 to 23.5 per cent in 1924, which practically equals the Swift & Co. proportion last year of 24.2 per cent. The combined slaughter of Armour & Co. and Swift & Co. for the fiscal year ending June 30, 1924, was 47.7 per cent of the total slaughter of all animals and 78.7 per cent of the total slaughter of the group formerly known as the Big Five. The other surviving members of this group, namely, Wilson & Co. (Inc.) and The Cudahy Packing Co., last year slaughtered 12.9 per cent of the total inspected slaughter and only 21.3 per cent of the Big Five proportion of the total.

These differences in the two big packer groups make it apparent that there is no longer a Big Five, or, strictly speaking, even a Big Four. With Armour & Co. and Swift & Co. to-day slaughtering practically 48 per cent of the total kill it is more proper to refer to them as the Big Two.

It appears from such information as the commission has been able to secure that the Big Five packers have earned proportionately less on their investment in the past five years than have the leading independent companies. In a report of the Secretary of Agriculture to the Senate in 1922 it was shown that in 1921[6] the five packers suffered operating losses totaling over $61,000,000 or 10.8 per cent on their net worth, while the independents, as a group, although many of them individually lost money, earned an average of about 3.2 per cent on net worth. In similar (although not altogether comparable) data for 1923 which were supplied the commission by the Secretary of Agriculture (see Appendix Table 1) it appears that the Big Five packers earned an average of 5.58 per cent on net worth, while 490 independent companies averaged for the same year a return of 11.81 per cent.

For the purpose of a year to year financial comparison the commission secured access through the Secretary of the Treasury to the income tax returns from 1918 to 1922, inclusive, of the Big Five packers and of 43 independent packers engaged in interstate slaughter. Although it was possible to compute from these records the average rates of return on investment for the 43 independents, the records of the Big Five packers were not in such form as to make possible a similar computation and comparison. The Treasury data for the 43 independents, however, may be compared with data for the Big Five packers from the latters' annual reports in Moody's Manual and the Commercial & Financial Chronicle, as follows:

[6] See Appendix Table 2.

Meat packers' gross sales, investment and profits, by years, 1918–1922

Group	Gross sales [1]	Investment [2]	Net profit [3]	Return on investment	
				Including appreciation	Excluding appreciation
				Per cent	*Per cent*
Big Five packers:					
1918	$3,212,608,000	$429,642,800	$101,332,402	22.9	12.8
1919	3,522,015,000	546,249,972	33,357,276	6.1	6.1
1920	3,152,274,000	590,296,928	1,580,078	.3	.3
1921	2,157,404,000	594,183,196	[4] 41,001,673	[4] 6.9	[4] 10.3
1922 [5]	1,686,164,000	492,708,871	7,661,355	1.5	[4] 3.0
Total 5 years	13,730,465,000	2,653,081,767	102,929,438	3.8	.5
1923	[6] 1,890,289,000	551,253,731	31,417,709	5.7	5.7
Independent companies: [7]					
1918	650,405,000	68,277,357	7,649,215	11.2	10.7
1919	737,256,000	78,873,135	5,582,138	7.1	5.3
1920	609,152,000	87,657,007	4,390,960	5.0	2.1
1921	450,303,000	92,740,770	2,293,688	2.5	1.3
1922	451,145,000	90,155,944	6,505,955	7.2	5.9
Total 5 years	2,898,261,000	417,704,213	26,421,956	6.3	4.7
All companies:					
1918	3,863,013,000	497,920,157	108,981,617	21.8	12.7
1919	4,259,271,000	625,123,107	38,939,414	6.2	6.0
1920	3,761,426,000	677,953,935	5,971,038	.9	.5
1921	2,607,707,000	686,923,966	[4] 38,707,985	[4] 5.6	[4] 8.7
1922	2,137,309,000	582,864,815	14,167,310	2.4	[4] 1.9
Total 5 years	16,628,726,000	3,070,785,980	129,351,394	4.2	1.1

[1] Wilson & Co.'s sales from Federal income tax returns; other Big Five from Moody.
[2] Capital stock and surplus, including appreciation at the beginning of the year.
[3] Less taxes, but including surplus adjustments and appreciation. Federal income taxes were deducted in all cases, because, for the Big Five packers, the earnings were not available prior to such deduction.
[4] Loss.
[5] Does not include Morris & Co.
[6] Estimated for Armour & Co.
[7] Forty-three companies all engaged in U. S. inspected slaughter

After the war year 1918, during which profits of packers generally were large, the reported group earnings of both the Big Five packers and of the independent packers declined annually until 1923. The independents reported a profit on investment throughout the period, however, while the Big Five packers reported on the average a loss of 10.3 per cent on investment (capital stock and surplus at beginning of year) in 1921 and another of 3 per cent in 1922. In 1923 the five packers earned 5.7 per cent on investment. No data on the 43 independents for 1923 were accessible from the Treasury records, but the compilation submitted to the commission by the Department of Agriculture and reproduced in Appendix Table 1 indicates for 490 independent packers (on a not altogether comparable basis) an average rate of profit on net worth in 1923 of 11.8 per cent. Indications from published reports are that both the Big Five and the independent packers earned profits on investment in 1924. All of the Big Five packers and many of the independents reported appreciation in the book values of their properties during the period 1918 to 1922. Since this item of appreciation was reflected in the investment and net profits shown but did not represent actual earnings, the data in the above table have been prepared to show

the rates of return exclusive of appreciation, as well as those including it.

Whether or no the poorer financial results of the Big Five packers as compared with that of the independents since the consent decree indicates an effect of the decree, the commission is not in a position to state without an examination of earnings incident to each phase or department of the five packers' operations. It should be pointed out, however, that in so far as the financial losses or declines in profit of the period 1919 to 1922, inclusive, resulted from the failure of export markets, the fluctuations in foreign exchange, and the defaulting of foreign debts, the Big Five packers, because of the larger size and scope of their business, probably suffered to a much greater extent than did the independents.

In the table below the average rates of profit for each of the Big Five packers for the five-year period are shown, together with the average rates for the independent packers, in groups based on investment size. (See also Appendix Table 3.)

Meat packers' average earnings for the five-year period 1918 to 1922, inclusive[1]

Company	Rate of return on investment	
	Including appreciation	Excluding appreciation
Big Five packers:	*Per cent*	*Per cent*
Armour & Co.	0.4	[2] 2.5
Morris & Co. (excluding 1922)	1.0	[2] 4.6
Swift & Co.	7.6	4.8
Wilson & Co.	3.8	[2] 2.4
Cudahy Packing Co.	3.1	1.5
Average for group	3.8	.5
Independent packers:		
Group 1 (20 companies with investment under $1,000,000)	8.2	5.7
Group 2 (18 companies with investment $1,000,000 to $4,000,000)	5.8	3.3
Group 3 (4 companies with investment $4,000,000 to $16,000,000)	6.3	6.0
Total independents	6.3	4.7
Total all companies	4.2	1.1

[1] Average earnings include all surplus adjustments.
[2] Loss.

It will be noted that, although the five packers as a group reported an average profit on investment of 0.5 per cent, the only one of them whose reported earnings were approximate to a fair interest rate was Swift, whose rate of return was 4.8 per cent. Three of the remaining five packers reported average losses for the period, and the fourth, The Cudahy Packing Co., reported a rate of profit of only 1.5 per cent.

More significant, however, is the indication from other sources that the independent packing companies have, during the past few years, assumed much more real independence in prices bid for livestock than was the case in former years. It appears that the dominant influence of the five packers as price makers in the big markets is substantially less to-day than it was at the time the commission made its investigation of the meat-packing industry.

COMPETITIVE CONDITIONS IN THE WHOLESALE GROCERY BUSINESS

It is alleged by some of those who urge that the Big Five packers be allowed to resume the so-called unrelated lines that packer competition in the wholesale grocery business will lessen a growing tendency toward monopolistic practices on the part of the wholesale grocers. In its decision allowing the California Cooperative Canneries to intervene in the present proceeding, the Court of Appeals of the District of Columbia declared on June 2, 1924:

> It is not clear on just what theory the court below should permit the grocers' association to intervene, and deny the right of intervention to appellant, as the interests of these parties seem to be diametrically opposed to each other. If the charge of appellant (California Cooperative Canneries) is true, that the wholesale grocers are using the decree against the packers to strengthen and build up a giant monopoly in their various and varied lines of business, there would seem to be demand for a searching inquiry as to whether or not the court is being used as an agency to restrain one monopoly and thereby promote, strengthen, and build up another. Clearly it is not the policy of the antitrust act to accomplish this result. Nor will the decree of the court below, declaring the packers' combination illegal under the antitrust act, be sustained if its effect is to safeguard one public interest by the destruction of another.

Examination of the records of legal proceedings undertaken against individual wholesale grocers and associations of wholesale grocers by the commission and the Department of Justice in recent years does not substantiate an allegation of monopoly conditions, either actual or potential. These records do indicate, however, active and sometimes illegal efforts on the part of local and State associations to confine the grocery trade to so-called regular and legitimate channels of distribution and to maintain by artificial restraint the pricing systems indorsed by such associations. Many of these efforts have involved boycotting, blacklisting, penalizing, and other practices which the commission has found to be unfair and against which it has issued cease-and-desist orders. Others have involved agreements to fix prices or discounts which the Department of Justice has attacked as conspiracies in restraint of trade. Since there are, it is estimated, over 5,000 wholesale grocers in the United States, it is perhaps true that the wholesale grocery business is too large and too widely distributed ever to be threatened with monopoly conditions, but it is also apparent that it is sufficiently organized and educated to what it conceives as its interest to threaten effectively many manufacturers and retailers who seek to change the ordinary processes of distribution, i. e., from manufacturer to wholesaler to retailer to consumer. In this sense the wholesale grocers have used energetic and sometimes illegal methods to combat direct selling of all sorts, whether undertaken by cooperatives, by the meat packers, or by chain-store systems which buy from the manufacturer and sell to the consumer. In opposing direct selling, or the elimination of middlemen, the wholesale grocer, perhaps correctly, feels that his own existence is at stake and needs little organization or education to be persuaded to use every power within his grasp to prevent his elimination from the distributive processes.

ILLUSTRATIONS OF THE LEGAL COMPLAINTS AGAINST WHOLESALE GROCERS

Both before and after the entry of the consent decree a number of complaints were issued against wholesale grocers and wholesale grocers' associations, their officers and members, in which allegations were made of unfair methods of competition and undue restraint of trade in violation of law. Some of these complaints were filed by the Department of Justice for alleged violations of the Sherman law against unlawful restraints and monopolies, and others were issued by the Federal Trade Commission for alleged violations of the Federal Trade Commission act which forbids unfair methods of competition.

The first case was brought in June, 1910, by the Department of Justice, in behalf of the United States, against the Southern Wholesale Grocers' Association, its officers and members, to prevent and restrain certain alleged violations of the Sherman law. A decree of injunction in this case was entered by the Circuit Court of the United States for the Northern District of Alabama, enjoining and restraining the defendants from further committing certain unlawful acts.

On February 20, 1919, the Federal Trade Commission issued a complaint against Haas-Baruch & Co., Stetson-Barrett Co. et al., which alleged a conspiracy to prevent a competitor from obtaining supplies. The respondents in this case were ordered by the commission to cease and desist, which order, in so far as it related to respondent wholesale grocers, was affirmed by the circuit court of appeals. A similar allegation as the above was contained in a complaint issued by the commission on November 25, 1919, against the Wholesale Grocers' Association of El Paso, Tex., et al., and in a complaint issued by the commission on February 28, 1920, against the Atlanta Wholesale Grocers et al. In the case of the Wholesale Grocers' Association of El Paso et al., the respondents were ordered by the commission to cease and desist, which order was upheld by the circuit court of appeals. In the case of the Atlanta Wholesale Grocers et al., an order to cease and desist was issued by the commission against certain of the respondents, and as to the others the complaint was dismissed.

In a complaint issued by the commission on March 17, 1919, the McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co. et al., were alleged to have conspired unfairly to hamper and obstruct a competitor from obtaining supplies at wholesale prices, and were ordered by the commission to cease and desist.

The complaints in all of the above cases, except that against the Atlanta Wholesale Grocers et al., were filed prior to the entry, on February 27, 1920, of the consent decree in the packers' case. Since the entry of that decree several other complaints have been issued against wholesale grocers' associations and their members. Cease-and-desist orders were issued by the commission in two instances; one a complaint against the St. Louis Wholesale Grocers' Association et al., issued on June 13, 1922, and the other a complaint issued on the same date against the Wisconsin Wholesale Grocers' Association et al. In both of these cases the respondents were alleged to have adopted and carried out a policy and plan coercing, and attempting to coerce, manufacturers of food products into guaranteeing

to protect association members against price declines. The remaining complaints issued by the commission against the wholesale grocers' association, their officers and members, 14 in number, are still on the commission's docket as part of its unfinished business.

The Department of Justice, in 1924, on behalf of the United States, filed in various district courts of the United States bills of complaint against four wholesale grocers' associations and one produce association, which cases are still pending.

The allegations in the complaints referred to above may be summed up as falling, for the most part, under two general headings, namely, that of price fixing, and that of attempting to confine the grocery trade to so-called regular and legitimate trade channels. With reference to prices, allegations are made of conspiracies not only to fix prices and discounts, but also to hamper wholesale dealers who fail to maintain the prices and discounts fixed, in their efforts to obtain supplies; to boycott and threaten to boycott producers and manufacturers who supply dealers who resell at less than fixed prices; to boycott and threaten to boycott manufacturers and producers who refuse to fix the prices at which their products shall be sold at wholesale and retail; and to refuse to supply retail dealers who fail to maintain resale prices. With reference to attempts to keep the grocery trade in so-called regular and legitimate channels, allegations are made of conspiracies to boycott and threats to boycott producers and manufacturers and their agents, to prevent competitors from obtaining supplies; to prevent manufacturers and producers and their agents from selling directly to so-called irregular dealers, such as cooperative purchasing enterprises, retailers, and to consumers; to prevent nonmembers of the association from participating in pooled car shipments; and to publish statements disparaging the business methods and financial responsibility of so-called irregular dealers. Other allegations, not falling strictly under "price fixing," or "attempting to confine the grocery trade to so-called regular and legitimate trade channels," are made of conspiracies to coerce manufacturers into protecting association members against price declines; to blacklist manufacturers who do not guarantee association members protection against price declines; to blacklist certain persons, firms, and corporations to whom sales, except for cash, are refused; and to prevent manufacturers from giving goods free to dealers.

VARIOUS ECONOMIC INTERESTS INVOLVED IN THE PRESENT LITIGATION

The principal parties whose economic interests are involved in the present efforts to vacate or modify the packer consent decree are (1) the packers, (2) the farmers, (3) certain manufacturers and other producers who were using the packer distribution, (4) the wholesale grocers, (5) the retail dealers, and (6) the consumers.

Two of the Big Five packers have quite recently indicated their desire to have the consent decree vacated by petitioning the Supreme Court of the District of Columbia to that end, but they have based their action on an alleged breach of faith by the Government and have not indicated whether or not they actually and unanimously desire to resume the unrelated lines.

The attitude of the farmers is not expressed in any formal authoritative way, although opposition to the annulment of the decree has been expressed by certain farm organizations. On the other hand, as shown in the next paragraph, the California Cooperative Canneries, a cooperative organization, and certain grape growers have taken a different stand.

The California Cooperative Canneries, a large portion of whose output was being distributed by Armour & Co., are interveners in the case for the avowed purpose of modifying the decree so as to permit them to regain this convenient and, they allege, more efficient outlet for their goods. Certain other canners communicated with the Department of Justice urging a modification or annulment of the decree.

The National Wholesale Grocers' Association and the American Wholesale Grocers' Association, on the other hand, are interveners opposing any modification of the decree on the grounds that such a step will subject them to a packer competition which, they allege, is unfair because of the financial power of the packers and their superior advantages in the transportation of the products they sell.

The retail dealers also have not expressed themselves in a formal or authoritative way, though some retail dealers and retail publications are in favor of allowing the packers to market the unrelated lines. The consumers, who are chiefly interested in low prices and good quality, including the best service, have not, of course, expressed their opinion. The public economic interest in the proceeding is chiefly that such a system of distribution shall be established as will, in the long run, best subserve the welfare both of the agricultural producers of food and the consumers thereof.

The economic problems involved are largely those of marketing, but they include not only the methods by which the farmer shall dispose of the livestock or produce from his farm but also how the packers, canners, or other manufacturers of food products shall distribute their products and how the retail merchants shall obtain these and other kinds of food for delivery to the consumer. While much of the discussion and legal argument in connection with this case has been directed to the question of the distribution of certain classes of grocery products (through the packers or through the wholesale grocers), the marketing problems involved are really much wider, and one of them at least—the problem of farm marketing of livestock—is apparently even more important. On account, however, of the controversy over the merits of the distributing systems of the packers and of the wholesale grocers, a brief comment is given here on some aspects of this subject.

Under the ordinary packers' system of distribution canned goods and other groceries are shipped by ordinary freight or private refrigerator cars from the manufacturers' plant or cannery to some one of the 1,200 or more packer branch houses located in the cities and larger towns and are distributed to retailers in smaller towns over some 1,400 different "peddler car" routes. These peddler car routes covered in 1918 many thousands of towns. Products from branch houses are distributed not only in the cities in which these plants are located but usually to a number of adjacent or neighboring points. By using the peddler cars a whole carload of meats, provisions, and

groceries may be shipped to a small town, thus securing the advantage of carload rates.

This system of packer distribution gives retailers and other wholesale buyers, such as hotels, a service with one middleman, the branch house or the peddler car operating between the manufacturer and the retailer. It is claimed by the wholesale grocers that there are some 7,000 towns in the United States which the packers reach with their regular schedule cars which the wholesale grocers can not reach with ordinary railway refrigerator service.[7]

Under the wholesale grocery system of distribution the manufacturer's goods are generally sold, either directly or through brokers, to wholesalers, the latter maintaining warehouses from which their goods are shipped or delivered to retailers. This system of distribution, of course, reaches practically every retailer in the country. Shipments are made either by ordinary freight or by ventilator-refrigerator cars owned by railroads or private companies. Most of their products, however, do not require special kinds of cars, because of their nonperishable character.

The power to reach small towns through the peddler car system or the mixed carload device, the lower freight cost obtained through carload shipments, the reduction in the labor of rehandling, the employment of fewer salesmen, and the greater regularity and dispatch of deliveries made possible through the loading of groceries into meat cars (which are preferentially treated by railroads), make the packer delivery system, it is claimed by the petitioner herein, a more efficient one than that of the wholesale grocers. According to the wholesale grocers, however, the packers through their control of refrigerator car lines have an advantage to which they are not entitled, and which would eventually permit them, if they so desired, to control the entire wholesale grocery business of the United States.

The California Cooperative Canneries protested to the Department of Justice soon after the consent decree was entered, alleging that the provision of the decree preventing the Big Five packers from handling canned goods worked a hardship on them, because it deprived them of a selling organization. In May, 1919, the California Cooperative Canneries had entered into a contract with Armour & Co., for the distribution of a large proportion of the Cooperatives' output. This contract was for a period of 10 years. Attorney General Palmer, it appears, advised Armour & Co. to distribute the canneries' pack during 1920. This seems to have been permissible under the time limits set by the decree. According to Mr. Campbell, general manager of the California Cooperative Canneries, Armour & Co. handled during 1920 about 50 per cent of the output of his company, the total of which amounted to about $4,000,000.[8] In the spring of 1921, the California Cooperative Canneries, as already stated, began to urge Attorney General Daugherty to have the decree modified at least with respect to fruits, canned goods, and other food products. The claim of injury through the decree, made by the California Cooperative Canneries, appears to rest in part on the

[7] Packers' Consent Decree, hearings before a Subcommittee on Agriculture and Forestry, United States Senate, sixty-seventh Congress, second session, p. 349.

[8] Packers' Consent Decree, hearings before a subcommittee on Agriculture and Forestry, United States Senate, Sixty-seventh Congress, second session, p. 95.

alleged efficiency of distribution by the largest packers and in part on the alleged hostility of the wholesaler toward that company.

The consent decree prohibited the Big Five packers from handling grape juice, among various other unrelated lines. Prior to the entry of the decree Armour & Co. had developed a large business in grape juice, and grape growers in lower Michigan and New York State sold a large proportion of their crops to this company. Soon after the United States Senate directed the present inquiry the president of the Westfield-Chautauqua & Erie Grape Grocers' Cooperative Association (Inc.), of New York State and 77 farmers and business men of Mattawan, Mich., addressed communications [9] to this commission which described the conditions under which they had formerly marketed their grapes and the unfavorable effects of the decree on their business.

The wholesale grocers' associations have led the opposition to a modification or annulment of the consent decree. Their opposition is largely based upon the theory that the large packers would soon have a monopoly of the entire food business, if permitted to handle the so-called unrelated food products. They argue that it is not safe to permit the same interests to control the merchandising of meats and that of other foods. They hold that a modification of the consent decree with respect to grocery lines would result in the elimination of competition and ultimately in the complete monopolization of the entire food trade. This viewpoint was stated by Victor H. Tuttle, secretary of the Southern Wholesale Grocers' Association [10] in a letter written November 26, 1921, to the Los Angeles Chamber of Commerce, as follows:[11]

> Should the suggested change take place it will mean a complete monopoly of the food business by the packers, known as the Big Five. Leaving the wholesale grocery business out of the argument entirely, a food monopoly of the world is a serious thing to contemplate.

Other grocers and other trade associations [12] are also on record alleging that the large packers would soon have a complete monopoly of the entire food business of the country if permitted to resume the unrelated lines. The method by which it is alleged this monopoly would be consummated was described by Clifford Thorne, attorney, representing the National Wholesale Grocers' Association, in the following language:[13]

> I want to state carefully our position now with reference to this data. The packers have taken advantage of their wonderful transportation facilities to undertake an expansion out into the entire food industry. Not content with handling 75 per cent of the interstate slaughtering business of the United States, they have attempted to expand out into all lines of the food industry. By the simple device of putting other articles into refrigerator cars they obtain this same preferential service without any additional charge for any commodity they decide to handle. Now they pay freight on these commodities, you know, but no additional charge for the preferential service accorded these commodities, whether they be perishable or not perishable, and whether they are products of the meat packing industry or not. No device could be more simple, and none more fatal to the rival shipper.

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[9] See Exhibits 1 and 2.

[10] Now the American Wholesale Grocers' Association.

[11] Packers' Consent Decree, hearings before a subcommittee of the Committee on Agriculture and Forestry, United States Senate, Sixty-seventh Congress, second session, p. 130.

[12] National Wholesale Grocers' Association, Canners' League of California, Dried Fruit Association of California, etc.

[13] Packers' Consent Decree, hearings before a subcommittee of the Committee on Agriculture and Forestry, United States Senate, Sixty-seventh Congress, second session, p. 346.

With reference to the ability of the packers getting favorable rules in the transportation of their commodities, I want to say their efforts, without criticism, have been quite effective.

In contrast to the attitude of the California Cooperative Canneries a number of fruit growers in California [14] have opposed a modification of the consent decree, because they are dependent upon the broker to help them finance their pack. They allege that the reentry of the large packers into the unrelated lines would soon eliminate the broker and force them to finance their own canning operations.

Those opposing any modification of the consent decree with respect to the unrelated lines on the grounds that such modification would soon result in the large packers securing monopoly control of the entire food trade of the country assert that the financial and economic power of the large meat packers is as great as that of all the wholesale grocers combined.

CONCLUSIONS

It is apparent from the foregoing that the principal measure in which the Big Five packers have failed to dispose of the properties and lines which the consent decree ordered them to surrender, is in the matter of the stockyards. Of shares of stock with a total par value of $18,519,650 owned by the Big Five in various stockyard units prior to the decree, shares with a total par value of only $4,201,450 or 22.7 per cent had been disposed of to December 19, 1924. It may be noted that Cudahy and Morris have disposed of practically all of their stockyard holdings; those still held by the packers belong chiefly to Swift and Armour. The packers claim that they have diligently endeavored to dispose of these properties. The fact remains, however, that almost five years after the decree the stockyards are still substantially undisposed of. Apparently more summary methods of disposal are necessary, if the decree is to be made effective.

The commission reported in 1918 that the stockyards controlled by the Big Five, including the Chicago yards, handled about 83 per cent of the total cattle handled by all yards and about 75 per cent of the other meat animals. Since the stockyards are the depot markets through which practically all animals moving in interstate commerce pass, and since they include the facilities for assembling, assorting, loading, and unloading, weighing, watering, feeding, etc., together with office buildings to accommodate livestock selling agencies (commission men) and stockyards officials, the control exercised by the Big Five packers gave rise to a recommendation of the commission in its report, as follows:

> That the Government acquire, through the railroad administration, the principal and necessary stockyards of the country, to be treated as freight depots and to be operated under such conditions as will insure open competitive markets, with uniform scale of charges for all services performed, and the acquisition or establishment of such additional yards from time to time as the future development of livestock production in the United States may require.

The end desired to be accomplished by this recommendation was the separation of the Big Five packers from their practical monopoly control of the stockyards. The suggested use of the then existing

[14] Raisin Growers' Association, California Prune and Apricot Growers (Inc.), California Peach and Fig Growers, Central California Berry Growers, etc.

United States Railroad Administration for this purpose was predicated on war-time conditions and a continuance of Government control of the railroads. This recommendation of the commission was reflected in clause 2 of the packer consent decree which recites:

> 2. That the defendants and each of them be, and they are hereby, jointly and severally, perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper, or stockyard market journal.

In addition, the packers and stockyards act of 1921 is aimed at governmental regulation, through the Department of Agriculture, of the stockyards as a common and public instrumentality. It is obvious, however, that no matter now efficiently or by what agency an administrative law governing an essential instrumentality, such as the stockyards, may be attempted to be enforced, uniformity of opportunity among various interests who have to use such instrumentality can not be attained so long as the most powerful and dominating of the various competitors retain possession. The independents, who have no such proprietorship but whose very life requires that they constantly use the stockyards, can be discriminated against in unescapable though often apparently minute ways, and their very freedom to protest to constituted authorities is shackled by the situation.

For this reason the commission believes that the Government must insist not only upon such regulatory powers as are conferred under the packers and stock yards act, but that the packing and stockyard interests must be divorced, whether by enforcement of the present decree or by some other means.

It is further apparent that the principal point in which the consent decree itself fell short of what this commission had previously recommended was in the matter of the refrigerator cars owned by the principal packers. The commission's report in 1918 showed that the Big Five packers owned 91 per cent of all refrigerator cars properly equipped for the shipment of fresh meats, while other interstate companies owned 7 per cent and other private car companies owned the remaining 2 per cent. This was shown to be such an advantage to the Big Packers as practically to limit the great majority of the independents to local distribution, largely excluding them from competing with the Big Five in the field of national distribution. The commission recommended—

> That the Government acquire, through the Railroad Administration, all privately owned refrigerator cars and all necessary equipment for their proper operation and that such ownership be declared a Government monopoly.

The principal effect aimed at in this recommendation was the separation of the great meat packers from the practical control of meat distribution which they exercised through their ownership of 91 per cent of all meat refrigerator cars. No clause in the packer

consent decree may be taken as in any way responsive to this recommendation of the commission.

The question of control of these adjuncts of distribution, the stockyards at which livestock are assembled and the refrigerator car systems by which meat products and groceries are transported for distribution, must, in the commission's opinion, be distinguished from the more general question of packer participation in so-called unrelated lines which gave rise to the present efforts to modify the consent decree. Packer manufacture or sale of canned goods, fruits and general groceries is a problem of economic integration or combination, but packer ownership of stockyards and refrigerator-car systems is an altogether different problem and involves the economic wisdom or justice of permitting one producer to own the depot and transportation facilities upon which competing producers must depend, facilities the nature of which makes them, perhaps, more properly to be regarded as public utilities. It is altogether possible that the same economic principles embodied in the "commodities clause," prohibiting railroads from transporting articles which they produce, may be pertinent to this situation in which one group of producers owns the depots and transportation facilities connected with the purchase of raw materials and the sale of finished products of the industry. Genuine competition in the packing industry would seem to require the divorcement of both the stockyard and the refrigerator and ventilator car services from the control of the big packers in the same degree and for the same reasons that competition in general industry required the abrogation of special privileges in railway terminal facilities and of special rebate concessions in freight rates, when Congress reformed railway transportation through interstate commerce legislation.

The question of Big Five ownership of refrigerator cars is directly related not only to the matter of competitive advantages over the independent packers but also to the problem of packer participation in unrelated lines such as groceries. The competitive advantages which it is alleged the packers secured through use of their beef cars for transportation of groceries, namely, quicker and surer service and lower rates, have been emphasized by the wholesale grocers' associations in their opposition to a modification of the decree.

If the big packers should be divorced from their control of refrigerator cars, the whole question of packer manufacture or sale of groceries and other unrelated lines becomes of much less importance. It would become then largely a question of their participation in any advantages of integration or combination of lines, and would no longer involve the possible unfair advantages resulting from control of transportation facilities.

The commission is advised of the economies and superior services which the packer system of grocery distribution, through use of their branch houses, mixed car shipments, direct routing and peddler car systems, is alleged to offer to the consumer, and particularly to the consumer located in smaller towns. In so far as this system offers economies and better services it should be preserved, if practicable. But if it involves a menace to competition in the sale of grocery products, or an unfair advantage to one group of competitors, it should be regulated so as to avoid these evils. Through divorcement of the packers from their control of refrigerator cars, thus rendering

their car service available on equal terms to all distributors of meats and groceries,[15] the commission believes that the alleged economic advantages of the system to the public may be preserved and the competitive disadvantages to other distributors eliminated.

The commission believes, however, that even with the transportation problem adjusted in this manner, the method of food distribution in the United States still involves many important and pressing problems which need a far more profound and comprehensive study than has been possible in the course of the present brief examination. Without such study it prefers not to express an opinion on the economic wisdom of permitting the Big Five packers to resume the distribution of groceries or other unrelated lines. An important factor in any study of this sort would necessarily be the extent to which competition has been restored in the meat-packing industry. The continued existence of any form of combination has a very definite relationship to the alleged potential power of the packers to monopolize the wholesale grocery business. The meat-packing monopoly which the commission reported in 1919 was based principally on the so-called "live stock percentage" agreement by which each of the packers purchased an allotted percentage of current live stock offerings, thus controlling the supply and the price of live stock through refraining from competition, but the commission has no more recent information on this point because the packer and stockyards act has deprived it of jurisdiction in this industry. It is also important to consider the effects of the Armour-Morris merger and of the comparative greater importance at the present time of the Swift and Armour companies among the old Big Five.

Since the validity of the consent decree of 1920 is now directly before the Federal courts, it does not seem appropriate that the commission undertake an expression of legal opinion on the question. Argument both for and against the validity of the decree may be consulted in extenso in the briefs filed in this case.

The commission was directed by the Senate to report upon the situation which might result in each of the following contingencies, viz:

(*a*) If the decree is enforced; or (*b*) if the decree is modified as proposed; or (*c*) if the decree is vacated and annulled.

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[15] Of interest in this connection is the Fruit Growers Express Co., incorporated in 1920 to furnish ventilator refrigerator cars to railways east of the Mississippi for transportation of fruits, vegetables, and other perishables. This company has about 16,500 cars in operation. It is not, however, an independent agency, as it was formerly controlled by Armour & Co. and, at present, all of its capital stock is owned by 18 railroads. In his testimony before the Interdepartmental Committee Mr. Campbell, general manager of the California Cooperative Canneries, who are now petitioning to have the consent decree vacated in order that the packers be permitted to distribute their canned fruits, stated:

"As a large shipper of products, both perishable and semiperishable, such as canned goods of California, I have been unable to see during the last 25 or 30 years since I have been acquainted with the system any method by which the railroads of the country could satisfactorily own and operate these car systems. There is no central management by which the thing could be controlled or handled. Machinery would have to be set up for the handling of these products properly. You would have the same difficulty in accommodating passengers with sleeping cars. The sleeping cars used in this country are practically all owned by the Pullman concern. These people distribute these cars over the country as they are needed in passenger service. A car may start from Oregon and land up in New York without change of service. That same method and system must be applied to the handling of fresh fruits and vegetables and canned products.

"I think I have explained to this committee here that, so far as the present system of private ownership of cars is concerned, it is absolutely essential to the proper distribution of our food products in this country. I think that has been admitted, so far as meats are concerned, and we shippers of fruits and other perishable products are perfectly acquainted with the necessity of private car systems."

Apparently Mr. Campbell's desire to reinstate the Big Five packers in the distribution of canned goods comes of a desire to have the packer distribution system maintained and made available for his use. It is difficult to see how the separation of the packers from their refrigerator cars could harm the interests of the California Cooperative Canneries so long as the car and distribution service itself were maintained intact, even though placed under a separate ownership.

The views of the commission as regards the contingencies named are indicated in the preceding pages of this report. They may be summarized as follows:

(*a*) Successful enforcement of the decree would finally separate the big packers from one of the two instrumentalities, the stockyards, whose control, in the commission's judgment, menaces competition in the meat product industry, while leaving the control of the other such instrumentality, the refrigerator cars, still in packer hands.

(*b*) Modification of the decree, as proposed by the California Cooperative Canneries, would leave the control of refrigerator cars in the hands of the big packers, although depriving them of stockyards control. It would reopen the unrelated lines to them, not as competitors on a parity with others, but armed with an immense advantage in their control of the refrigerator car service.

(*c*) Vacation of the decree would not only give the packers, both in meat products and in related and unrelated lines, the advantage of the control of the refrigerator car service, but also would leave them in meat products the advantage of the possession of the stockyards. It might, however, open the way to subsequent congressional action or judicial procedure more competent to remedy the conditions which were sought to be remedied by the consent decree. Consent should not, however, in the commission's opinion, be voluntarily given to either a vacation or a modification of the consent decree such as would permit the packers to reenter the unrelated lines, unless means of assured legality have first been undertaken to effect their divorcement from the stockyards and refrigerator cars.

RECOMMENDATIONS

Control of the two principal adjuncts of distribution in the meat industry, the stockyards, at which livestock are assembled, and the refrigerator cars, in which meat products and other lines are distributed, were, according to the commission's reports in 1918 and 1919, the basis of Big Five control of the meat-packing business, and the latter factor furnished the basis of their potential extension into the wholesale grocery business. Events subsequent to these reports and to the consent decree in 1920, while undoubtedly altering the situation in some important respects, have not been of a nature to change, apparently, the fundamental conditions. The failure of the consent decree to divorce the Big Five from their control of the refrigerator cars, and the failure of the Big Five to divorce themselves from the stockyards, as they were ordered to do under the decree, prompts the commission now to reaffirm its position in these regards. In view of the fact, however, that the United States Railroad Administration, formerly exercising governmental control of railroads, is no longer in existence, and in view of the further fact that governmental control of railroads in peace times is a policy not favored by Congress, it is recommended—

1. That steps be taken either by the courts or by the Congress finally to separate the packers from their ownership of the stockyards, either through prompt sale to already existing agencies, such as the principal connecting railroads, or to separate companies,

entirely independent, both in law and in fact, of the control of the packers, for the operation of the several yards.

2. That similar steps be taken to separate the Big Five packers from their control of meat and refrigerator cars (both meat cars and ventilator cars) through formation of a single company, similar to the Pullman Co., entirely independent of the control of the packers both in law and in fact, to take over ownership, operation, and routing of these cars. In the futherance of this plan, it is also recommended that the principle of the commodity clause be applied to other packers operating such cars, to prevent any discrimination in this respect.

3. That the stockyards as well as the refrigerator cars, both being adjuncts of transportation, be declared public utilities and their operation subjected to the regulation of the Interstate Commerce Commission.

The foregoing report is submitted to the Senate of the United States by order of the commission and is signed by the chairman of the commission, acting for the commission.

VERNON W. VAN FLEET, *Chairman.*

FEDERAL TRADE COMMISSION,
Washington.

SIR: In assenting to the transmission of the report of the Federal Trade Commission made in pursuance of Senate Resolution No. 278, adopted December 8, 1924, I desire to make some observations under that portion of the resolution in question which calls for recommendations on the public policy involved in the so-called packers' consent decree.

This consent decree is in effect a contract between the respondents named in the petition and the Attorney General of the United States, which has received judicial sanction, whereby the five respondents limit their economic and competitive freedom. It is immaterial that this result was due to the pressure of attendant circumstances. It is much more significant that the policy expressed by the decree was adopted in a spirit of compromise rather than after an open trial of its merits in which conflicting elements of private interest might have been weighed and the public interest considerately determined.

The respondents agreed to discontinue the manufacture, transportation, and distribution of certain commodities enumerated in the decree, largely relating to the wholesale grocery trade. These are generally spoken of as nonrelated lines; that is, lines not related to the meat-packing industry. It was not unlawful for the five packers to engage in this business and the power of a court to enjoin them therefrom would depend upon the appearance of monopolistic or restraint of trade conditions either in these nonrelated lines or in the operations of the respondents in other but related fields of action. This the respondents did not admit and it was not proven. The decree itself is excluded by its terms from interpretation as an admission, and this reservation received judicial sanction with the remainder of the decree. The illegality of operation in the nonrelated lines not having been proven or admitted, the agreement to refrain therefrom was a voluntary self-restraint so far as the respondents were

concerned, accepted probably as a protection against some other development more greatly apprehended. As this decree expresses a public policy, the real question presented by it is whether it expresses a true public policy and is effective to enforce it.

The discernment of the public interest in the maintenance of free competition requires a distinction between competition and competitors, such as may be drawn between mathematics and mathematicians. The one is a system of rules, the other those who, to the extent of their understanding or purpose, practice in accordance with those rules. The public interest is in the system, the interest of those within the system is private. As these private interests accord with or depart from the rules of the system, the public interest is enhanced or invaded.

In securing conformance to the rules of competition in the public interest two alternatives present themselves. One is exclusion, the prohibition of stated activities either because they are per se violations of the system of competition and therefore no private right therein can exist or because they are deemed to have an unavoidable tendency in practice to develop into violation of the system. The other alternative is regulation which prescribes the lines of action and its direction but permits it. The first is simple, the second is difficult. But if exclusion is overindulged the result is a lessening of competitive freedom quite as pernicious as the evil which exclusion seeks to prevent.

The effect of the consent decree is the adoption of the policy of exclusion as the method of maintaining the competitive system in the particular field. Assuming this to be a sound conception of public policy, it appears that as a remedy the decree is defective in several important particulars.

1. As an act of exclusion it is incomplete.

The respondents are not excluded from engaging in all nonrelated lines. They still deal in poultry, eggs, milk, butter, butter substitutes, cheese, and other milk products, all of which are competing alternatives for meats and meat products and quite as "nonrelated" as the excluded lines.

2. As an act of exclusion it is limited in its application.

The exclusion applies to but five of all who were at the time of the decree or who may hereafter be packers of meat products.

3. As an act of exclusion it is temporary.

Not only is there always a possibility of modification on motion of the Attorney General, there is also a possibility of modification on the application of the respondents or other interested parties as the present proceedings indicate. It may also be observed that a reorganization of any of the five respondents might conceivably be conducted so as to present a new corporation not subject necessarily to this restraint.

Of course the decree could apply only to the respondents named in the action and its temporary effect is inherent in the process. But if this consent decree be regarded as a medium for the protection of the public interest upon the assumption that exclusion of meat packers from nonrelated lines is essential to the maintenance of the competitive system, it is a defective process the full potentiality of which is inadequate to the confidence imposed in it. If it is not

justifiable on this basis, the partial exclusion of a few packers from some nonrelated lines must stand as a penalty imposed upon them for misconduct elsewhere. This in turn becomes a penalty upon the public because if these packers are not excluded from nonrelated lines on grounds of public policy, their exclusion from competitive action penalizes the public welfare which depends upon the full extent of lawful competitive effort. Or if, exclusion from some nonrelated lines was visited upon these five packers because of their control of refrigerator-car transportation, it would seem that the exclusion should continue only so long as the transportation control lasts. For in that case it would be the control of transportation and not the engagement in nonrelated lines which is unlawful.

This question of exclusion from nonrelated lines containing competitive substitutes for the primary lines is the real question which the consent decree raises but does not and can not solve. The public policy involved should not be determined by the consent of five respondents acting under considerable pressure, covering only a part of the agencies likely to be affected and applying only to a part of their activities. If the principle of such exclusion is sound it should receive recognition and statement in general form by Congress and become a continuing, universal rule. If it should not be a general law because it does not conform to sound public policy and does not serve the public interest, it does not meet the same tests and is not justified in the particular case of the five respondents.

If, on the other hand, it should be the public policy to regulate the engagement of packers in nonrelated lines rather than exclude them or some of them therefrom; to allow these particular packers the same competitive freedom as is given to all other packers then in business or who may subsequently enter that business, the exclusion feature of the consent decree is a departure from such a conception of public policy and is inconsistent with it.

The public interest in the field of distribution is in the existence of the open possibility to the development of its greatest efficiency. It would seem that no agency should be excluded therefrom, prevented from proving its worth in that field, unless there is something more than a conflict with previously asserted private rights presented as an obstacle. The wholesale grocer seems to concede the present ability of the packer as a distributing agency. Whether this ability is due to a particular advantage in the control of refrigerator car transportation and would continue if the packers were deprived of this advantage is open to question. In any event the argument for exclusion of the packers from nonrelated lines because of a special advantage enjoyed by them directs itself more closely to the removal of the special advantage, i. e., regulation, than to the exclusion of the packer. Whatever efficiency the packer may develop as a distributive agent when separated from any unlawful advantage he may now possess the wholesale grocer is required to meet by the conditions of the competitive system. The public interest in that system will not be served except on these terms.

In so far as the wholesale grocer objects to packer competition because of his unlawful advantage, he argues for the public interest in the integrity of the competitive system which denies special privilege. If the wholesale grocer objects to packer competition on the same

ground that he takes when he objects to the granting of quantity discounts to cooperative organizations and poolings arrangements of retailers on equal terms with himself, his argument is based in concern for a private interest. In so far, however, as the wholesale grocer bases his objection upon the ground that engagement by the packers in nonrelated lines containing commodities which compete as alternatives or substitutes for the direct lines is not in accord with a sound public policy he raises an issue which is very much broader than a conflict with his private rights, and to which the consent decree is not an answer.

It is this aspect of the public policy involved by the consent decree which it seems to me is justifiably recommended to the consideration of the Senate.

Respectfully submitted.

NELSON B. GASKILL,
Commissioner.

The PRESIDENT OF THE SENATE
OF THE UNITED STATES,
Washington.

APPENDIX

EXHIBITS

EXHIBIT 1

WESTFIELD, N. Y., *December 31, 1924.*

FEDERAL TRADE COMMISSION,
Washington, D. C.

DEAR SIRS: Regarding S. Res. 278 by Mr. Norris in connection with case commonly known as "The Packer Consent Decree" I wish to offer certain information relative to the effect the said decree has had on the grape industry in the grape belt known as the Chautauqua-Erie Grape Belt, New York and Pennsylvania.

This grape belt has 42,000 acres of vineyards of which 98 per cent is set to the variety known as the Concord grape. This grape is especially a grape-juice grape and is about the only grape used for that purpose. I have reference to unfermented grape juice. Unfermented grape juice has been made in this belt since 1897. Some years as high as 65 per cent of our tonnage has been used for that purpose. Now less than 16 per cent is used for unfermented grape juice.

A serious condition confronts the eastern grape growers owing to the increase in production in California grapes. A few years ago California shipped from ten to twelve thousand cars of grapes. In 1924 California shipped 53,000 cars and 13,000 were sold in New York City, which is more than double the number of cars grown in this belt. California begins shipping about four weeks earlier than New York State and the result is that all the eastern markets are packed full with California grapes and embargoes are on most of our eastern cities when we begin to move our crop. With thousands of cars in transit from California we can get into our eastern markets only by permits and these are hard to obtain, which works a great hardship to our growers.

The Concord grape is a very perishable fruit and can not be kept in storage but for a few days, hence our best market and storage plants are the grape-juice manufacturers who convert our grapes into unfermented grape juice. Any restrictions in the manufacture or sale of unfermented grape juice is directly against the interests of the grape growers. We have fully $18,000,000 invested in the grape industry in this section of the State. Our growers are not making much more than a living with nothing for their investment.

We were greatly disappointed when "The Packer Consent Decree" went into effect as it closed one of our largest unfermented grape-juice plants, that of Armour & Co., located at Westfield, N. Y., and also the one in Michigan. Armour & Co. has operated in this belt for many years and were good buyers and prompt payers. They have the confidence and good will of all the growers. Their methods of doing business have always been open and above board with our growers and they are entitled to the confidence which they have through their fair and honest treatment of all.

In 1919 Armour & Co. paid at their Westfield, N.Y., plant for grapes, $300,903.39; in 1920, $324,576.07; and in 1922 they paid $191,672.96. Since that date this company has purchased no grapes on account of the restrictions in the packer consent decree.

The sale of grape juice is made by advertising and pushing the commodity. The restrictions placed on the packers selling agencies have absolutely put them out of the manufacture of grape juice. A relief from the operation of the decree so far as it pertains to the manufacture of grape juice and fruit products would be of great benefit to the grape and fruit industry.

Will you please submit this information with your report to Congress as requested by the resolution above referred to.

Thanking you for the favor, I am

Very truly yours,

WESTFIELD-CHAUTAUQUA & ERIE GRAPE GROWERS'
COOPERATIVE ASSOCIATION (INC.).

D. K. FALVAY, *President.*

EXHIBIT 2

To the Federal Trade Commission, Washington, D. C.:

We, the undersigned, farmers, grape growers, and business men of the village and vicinity of Mattawan, Mich., believing and understanding that a decree of the Supreme Court of the District of Columbia which has been heretofore entered against Swift & Co., et al., and which decree has enjoined to some extent the Armour & Co. grape-juice plant at Mattawan, Mich., in the manufacture and selling of grape juice; that prior to the year of 1920, the said Armour & Co. purchased from the grape growers in the vicinity of Mattawan large quantities of grapes for the manufacture of grape juice; and in the course of said manufacture the said company caused the employment of many people in this vicinity and which employment was looked forward to by many of the laborers as their means of support; that the purchase of said grapes was an outlet for a large percentage of the grape growers and by disposing of same to the said company, these grapes were not placed upon the market for sale and thereby causing a reduction in the price.

That the said Armour & Co. has a modern up-to-date, well equipped plant at Mattawan for the manufacture of grape juice and as such owner is a large contributor upon the tax roll in the township of Antwerp; that since the said decree was entered in the Supreme Court of the District of Columbia, on or about the 1st of March, 1920, there has been a general depression in the business conducted by the said Armour & Co. plant.

And that grape growers in this vicinity have suffered divers losses from said decree, as the result of the said company's inactivities,

We, therefore, respectfully petition your honorable board to investigate and obtain all of the information regarding the history and present status of said decree and of the effects that it may have upon the grape growers, farmers, and citizens in this community and to effect all lawful means; to bring about and better the conditions which now exist at this time.

Respectfully submitted.

(Signed by 77 farmers, grape growers, and business men of Mattawan, Mich.)

APPENDIX TABLES

APPENDIX TABLE 1.—*Condensed statement of operations for year 1923 with annotations concerning variations in contents of reports used*

494 PACKING CONCERNS

	Total average net worth	Total income	Total cost of goods sold	Total other expenses	Total depreciation
Group No. 1, 432 concerns (net worth under $1,000,000)	$87, 363, 396. 62	$467, 290, 750. 06	$419, 168, 554. 32	$33, 304, 718. 70	$2, 979, 052. 79
Group No. 2, 45 concerns (net worth $1,000,000 to $4,000,000)	90, 351, 832. 57	321, 803, 071. 96	261, 013, 515. 23	49, 883, 541. 91	1, 363, 191. 74
Group No. 3, 13 concerns (net worth $4,000,000 to $16,000,000)	114, 580, 847. 03	365, 333, 848. 33	284, 339, 260. 04	60, 570, 161. 31	1, 934, 152. 43
Group No. 4, 4 concerns (net worth over $16,000,000)	562, 726, 985. 50	1, 954, 620, 931. 81	1, 514, 564, 919. 98	364, 021, 810. 39	14, 262, 541. 27
Total 494 concerns	855, 023, 061. 72	3, 109, 048, 602. 16	2, 479, 086, 249. 57	507, 780, 232. 31	20, 538, 938. 23
Total without Group No 4	292, 296, 076. 22	1, 154, 427, 670. 35	964, 521, 329. 59	143, 758, 421. 92	6, 276, 396. 96

APPENDIX TABLE 1.—*Condensed statement of operations for year 1923 with annotations concerning variations in contents of reports used*—Continued

FOUR LARGEST PACKERS, YEAR 1923

	Total average net worth	Total income	Total cost of goods sold	Total other expenses	Total depreciation
Swift & Co	$213, 381, 517. 70	$726, 767, 919. 07	$589, 616, 187. 29	$109, 974, 138. 11	$4, 565, 527. 23
Wilson & Co	49, 502, 241. 44	220, 619, 984. 62	183, 906, 895. 57	30, 440, 899. 17	
Cudahy Packing Co	30, 432, 278. 58	190, 964, 098. 75	114, 470, 067. 42	70, 573, 598. 96	1, 725, 310. 67
Armour & Co	269, 410, 947. 78	816, 268, 929. 37	626, 571, 769. 70	153, 033, 174. 15	7, 971, 703. 37
Total Group No. 4	562, 726, 985. 50	1, 954, 620, 931. 81	1, 514, 564, 919. 98	364, 021, 810. 39	14, 262, 541. 27

494 PACKING CONCERNS

	Total interest	Total expenses	Total net gains during year	Percentage rates of return on net worth	Percentage rates of return on income
Group No. 1, 432 concerns (net worth under $1,000,000)	$1, 697, 751. 45	$457, 150, 077. 26	$10, 140, 672. 80	11. 607	2. 170
Group No. 2, 45 concerns (net worth $1,000,000 to $4,000,000)	1, 572, 825. 73	313, 833, 074. 61	7, 969, 997. 35	8. 821	2. 476
Group No. 3, 13 concerns (net worth $4,000,000 to $16,000,000)	2, 091, 358. 81	348, 934, 932. 59	16, 398, 915. 74	14. 312	4. 488
Group No. 4, 4 concerns (net worth over $16,000,000)	30, 353, 950. 06	1, 923, 203, 221. 70	31, 417, 710. 11	5. 583	1. 607
Total 494 concerns	35, 715, 886. 05	3, 043, 121, 306. 16	65, 927, 296. 00	7. 710	2. 120
Total without Group No. 4	5, 361, 935. 99	1, 119, 918, 084. 46	34, 509, 585. 89	11. 806	2. 989

FOUR LARGEST PACKERS, YEAR 1923

Swift & Co	$9, 427, 447. 12	$713, 583, 299. 75	$13, 184, 619. 32	6. 178	1. 814
Wilson & Co	3, 821, 323. 45	218, 169, 118. 19	2, 450, 866. 43	4. 951	1. 110
Cudahy Packing Co	2, 184, 923. 45	188, 953, 900. 50	2, 010, 198. 25	6. 605	1. 052
Armour & Co	14, 920, 256. 04	802, 496, 903. 26	13, 772, 026. 11	5. 111	1. 687
Total Group No. 4	30, 353, 950. 06	1, 923, 203, 221. 70	31, 417, 710. 11	5. 583	1. 607

1. The foregoing is a condensed statement of the operations of 494 packing companies for the year, 1923. The classification of the three numbered groups is based upon net worth. The results for the four largest packing companies are shown separately. All figures have been compiled from financial reports submitted in response to a request under authority of the packers and stockyards act.

For the purposes of the above tabulation, (*a*) average net worth was obtained by adding the net worth at the beginning of the fiscal year and the net worth at the end of the same fiscal year, and dividing the total by two; (*b*) total income represents gross income from sales and all other sources, including earnings which may not have arisen from the packing business; and (*c*) total expenses covers cost of goods sold, including purchases of livestock, dressed meat and other goods and supplies with necessary inventory adjustments considered, depreciation and interest or net interest paid, but not dividends, as shown. Federal income taxes have been included in total expenses as far as disclosed. In this respect this report differs from that for 1921 in which such taxes were excluded. There are a number of concerns for which separate reports were received by this Department which, although they may be owned or controlled in whole or in part by various members of the group of the four largest packers, were not included in the reports of these packers, and, therefore, each of such concerns is included in its respective group according to its net worth. The figures for Armour & Co. include the business of Morris & Co. from the time of acquisition.

The concerns have usually furnished the statements prepared for use in their own business and for the purposes of this tabulation they have not been subjected to further verification. The reports utilized include packers doing 98.12 per cent of the total slaughter of meat animals under Federal Inspection. Because of

the variety of accounting methods and practices used in the packing industry there is considerable diversity as to details in reports submitted and used. Without attempting to list all of the types of variation, the following are mentioned specifically in order that there may be no misunderstanding as to the comparability of the data:

(*a*) The four largest packers do not keep profit and loss statements in accord with the subdivisions shown on the condensed statement, but divide their business upon a departmental basis and the net income reflects the net profits from all of the departments. The figures shown for them are made up of approximate sales as computed by the statistical departments of these companies, actual inventories, actual purchases, and a net profit amount that takes into consideration all of the profits shown on the departmental basis. Whatever discrepancies exist between these items and the actual net profits are computed and shown as additional cost of goods sold.

(*b*) Companies that have extensive foreign sales, and whose accounting methods do not provide for complete allocation of these foreign sales, have included in total income and total net gains for the year the results of foreign operations; while other companies that did not sell to foreign countries or that separately allocated the foreign business have reported the results of domestic business only.

(*c*) Some companies have reported gross sales without any deductions for returned goods; others have reported gross sales less returns and allowances; while still others have taken into consideration freight expenses in but not freight expenses out.

(*d*) Some companies that operate retail branches do not segregate manufacturing operations from retail activities and hence have included retail sales in their profit and loss statements.

(*e*) A substantial number of concerns have included sales of ice and returns from trading operations not necessarily a part of the packing industry.

(*f*) Some firms have made estimated allowances for income taxes; others have deducted income taxes paid on incomes of prior years; and still others have made no deductions of any kind for such taxes.

(*g*) The operations of subsidiary companies, in some cases, were included with the operations of the parent companies, particularly in cases where the parent companies owned a substantial amount of stock in the subsidiary companies. In other cases where the subsidiaries' affairs were kept entirely separate they have submitted their own financial statements, and there are no indications on these statements that their capital stock issues are a part of the investment of the parent companies, nor that the results of operations should be included with those of the parent companies.

(*h*) There is lack of uniformity as to fiscal years used by different companies. In the case of many concerns, fiscal years coincide with calendar years, but many other endings are used. In a few cases reports did not cover a full year of operation.

(*i*) The item of interest paid is shown by some companies as total interest paid with total interest received included in total income, while other companies show total interest paid or total interest received merely as a net figure which is the difference between the two accounts.

As previously stated, the foregoing paragraphs are not intended to list completely the types of variation encountered in the reports. Attention is directed to them in order that proper allowances may be made for such modifications in results as would be disclosed under detailed analysis. The total sums involved are so large that modification of individual items alters the general result but slightly. The picture of the industry presented by the tabulation is the best available with existing data and shows its large and important aspects.

APPENDIX TABLE 2.—*Condensed profit and loss statement of 170 packing concerns for year 1921 (computed by Department of Agriculture)* [1]

Group	Range of net worth	Number of companies	Total average net worth	Total receipts
1	Under $1,000,000	117	$34,436,977.00	$197,344,631.59
2	$1,000,000 to $4,000,000	39	79,949,164.27	320,870,773.09
3	$4,000,000 to $12,000,000	9	65,667,853.44	281,852,028.66
4	Over $12,000,000	5	564,095,661.53	1,784,881,460.87
	Total (170 concerns)	170	744,149,656.24	2,584,948,894.21
	Total without group 4	165	180,053,994.71	800,067,433.34
	Group 4 by individual companies:			
	Armour & Co		222,769,945.62	538,421,973.64
	Swift & Co		221,646,136.89	689,759,000.00
	Morris & Co		47,285,525.81	217,663,838.28
	Wilson & Co		42,256,317.77	164,825,274.74
	Cudahy Packing Co		30,137,735.44	174,211,374.21
	Total		564,095,661.53	1,784,881,460.87

Group	Range of net worth	Total expenditures	Total gains or losses for period	Percentage rates of return on net worth	Percentage rates of return on receipts
1	Under $1,000,000	$194,856,066.94	$2,488,564.65	7.22	1.23
2	$1,000,000 to $4,000,000	319,180,295.85	1,690,477.24	2.11	.52
3	$4,000,000 to $12,000,000	280,309,136.11	1,542,892.55	2.35	.574
4	Over $12,000,000	1,845,882,726.76	[2] 61,001,265.89	[2] 10.81	[2] 3.40
	Total (170 concerns)	2,640,228,225.66	[2] 55,279,331.45	[2] 7.44	[2] 2.14
	Total without group 4	794,345,498.90	5,721,934.44	3.18	.715
	Group 4 by individual companies:				
	Armour & Co	570,131,791.16	[2] 31,709,817.52	[2] 14.23	[2] 5.89
	Swift & Co	697,571,291.77	[2] 7,812,291.77	[2] 3.52	[2] 1.13
	Morris & Co	229,111,379.05	[2] 11,447,540.77	[2] 24.21	[2] 5.08
	Wilson & Co	173,287,327.51	[2] 8,462,052.77	[2] 20.03	[2] 5.13
	Cudahy Packing Co	175,780,937.27	[2] 1,569,563.06	[2] 5.21	[2] .90
	Total	1,845,882,726.76	[2] 61,001,265.89	[2] 10.81	[2] 3.40

[1] The commission is advised by officials of the Department of Agriculture that qualifying notes similar to those for Appendix Table 1 were originally attached to this table, but were not printed in the Senate document from which these figures were obtained.

[2] Loss.

APPENDIX TABLE 3.—*Meat packers' average earnings for the five-year period, 1918 to 1922, inclusive* [1]

Company	Rate of return on investment	
	Including appreciation	Excluding appreciation
BIG FIVE PACKERS	*Per cent*	*Per cent*
Armour & Co	0.4	[2] 2.5
Morris & Co. (excluding 1922)	1.0	[2] 4.6
Swift & Co	7.6	4.8
Wilson & Co	3.8	[2] 2.4
Cudahy Packing Co	3.1	1.5
Average for group	3.8	.5
INDEPENDENT PACKERS		
Group 1 (investment under $1,000,000):		
Company No. [3]—		
1	[2] 3.2	[2] 3.2
2	[2] .6	[2] .6
3	.3	.3
4	6.9	6.9
5	9.8	9.8
6	1.8	1.8
7	5.5	5.5
8	14.7	14.7
9	22.1	11.0
10	8.7	8.7
11	6.1	2.9
12	13.8	13.8
13	17.3	17.3
14	10.3	10.3
15	7.2	7.2
16	10.6	6.7
17	7.6	7.6
18	[2] .9	[2] .9
19	.4	.4
20	30.0	14.9
Average for group	8.2	5.7
Group 2 (investment $1,000,000 to $4,000,000):		
Company No.—		
21	15.0	15.0
22	7.1	7.1
23	.7	[2] 6.9
24	8.6	8.6
25	21.3	21.3
26	[2] 9.1	[2] 9.1
27	2.6	[2] 1.9
28	11.5	5.4
29	[2] 23.3	[2] 23.8
30	14.7	14.7
31	6.9	5.6
32	[2] 4.0	[2] 4.0
33	2.8	[2] 5.8
34	5.8	[2] 4.0
35	15.7	15.7
36	10.0	.0
37	9.9	9.9
38	[2] .5	[2] .5
Average for group	5.8	3.3
Group 3 (investment $4,000,000 to $16,000,000):		
Company No.—		
39	[2] 2.4	[2] 3.5
40	9.8	9.8
41	9.7	9.7
42	9.4	9.4
Average for group	6.3	6.0

[1] Average earnings include surplus adjustments.
[2] Loss.
[3] Order of companies in each group not according to size.